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Friday, August 1, 2014

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Parts 610, 622, 625, 652, and 662

Commodity Credit Corporation

7 CFR Parts 1455 and 1465

[Docket No. NRCS–2014–0006]

RIN 0578–AA60

Changes to Existing Conservation Program Regulations

AGENCY: Natural Resources Conservation Service and the Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Interim rule with request for comment.

SUMMARY: The Agricultural Act of 2014 (the 2014 Act) made several, nondiscretionary changes to the Natural Resources Conservation Service (NRCS) conservation programs. These conservation programs have existing regulations that require adjustments, including addressing the required review of operating procedures of the State Technical Committee, adding reference of the Regional Conservation Partnership Program (RCPP) to the Watershed Protection and Flood Prevention Act program regulations, adding reference of the RCPP to, and expanding the definition of, ''acreage owned by Indian Tribes'' under the Healthy Forests Reserve Program (HFRP), revising and simplifying the Regional Equity provision, and adjusting the Agricultural Management Assistance (AMA) program to correspond with changes to payment provisions under the Environmental Quality Incentives Program (EQIP). Additionally, the Secretary of Agriculture has delegated to NRCS administrative responsibility for implementation of the Voluntary Public Access and Habitat Incentive Program (VPA–HIP) and internal NRCS administrative changes warrant updating the appropriate delegated official in the technical service provider (TSP) provision. This interim rule, with request for comments, implements changes to these NRCS conservation program regulations that are either necessitated by enactment of the 2014 Act or are required to implement administrative streamlining improvements and clarifications.

DATES: *Effective Date:* This rule is effective August 1, 2014.

Comment date: Submit comments on or before September 30, 2014.

ADDRESSES: You may submit comments using one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments for Docket No. NRCS–2014–0006.
- U.S. mail or hand delivery: Public Comments Processing, Attn: Docket No. NRCS–2014–0006, Regulatory and Agency Policy Team, Strategic Planning and Accountability, U.S. Department of Agriculture, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Building 1–1112D, Beltsville, MD 20705. NRCS will post all comments on *http://www.regulations.gov.* Personal information provided with comments will be posted. If your comment includes your address, phone number, email address, or other personal identifying information, please be aware that your entire comment, including this personal information, will be made publicly available. Do not include personal information with your comment submission if you do not wish for it to be made public.

FOR FURTHER INFORMATION CONTACT: Leslie Deavers, NRCS Farm Bill Coordinator, U.S. Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1510; fax: (202) 720–2998; or email: *leslie.deavers@wdc.usda.gov,* Attn: Farm Bill Program Inquiry.

Persons with disabilities who require alternate means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB will not review this interim rule.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this interim rule, we invite your comments on how to make its provisions easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

The 2014 Act made changes in statutory authority and administrative delegations that require conforming amendments to existing program regulations. The changes made to these regulations by this rule will ensure that the regulations conform to the new statutory authorities and delegations. Such changes are mandatory and, therefore, do not require analysis under the National Environmental Policy Act. In addition, a number of minor administrative improvements are made to the regulations as a result of continuing evaluations of NRCS program implementation efforts. Such

administrative changes fall within a categorical exclusion for policy development, planning, and implementation which relate to routine administrative activities (7 CFR 1b.3(a)(1)).

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that this interim rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The mandatory changes in these existing regulations present no issues that our analysis identified as posing a risk of adverse impacts. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in the U.S. Department of Agriculture (USDA) programs. NRCS conservation programs apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the conservation program rules portend no adverse civil rights implications for women, minorities, and persons with disabilities.

Paperwork Reduction Act

Section 1246 of the Food Security Act of 1985 (1985 Act), Public Law 99–198, states that implementation of programs authorized by Title XII of the 1985 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

Executive Order 13175

This interim rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have been substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. NRCS has assessed the impact of this interim rule on Indian Tribes and determined that this rule does not have Tribal implications that require Tribal consultation under EO 13175. The rule neither imposes substantial direct compliance costs on Tribal governments nor preempts Tribal law. The 2014 Act change addressed in this interim rule that impact participation by Indian Tribes was limited to expanding land eligibility under HFRP to include trust lands. The agency has developed an outreach/collaboration plan that it will implement as it develops its Farm Bill policy. If a Tribe requests consultation, NRCS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires NRCS to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and Tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

NRCS has considered this interim rule in accordance with Executive Order 13132, issued August 4, 1999. NRCS has determined that the interim rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this interim rule does not have Federalism implications.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA has estimated that this regulation will not have an annual impact on the economy of $100,000,000 in 1994 dollars, and therefore, is not a major regulation. Therefore, a risk analysis was not conducted.

Executive Order 13211

This rule is not a significant regulatory action subject to Executive Order 13211, Energy Effects.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121, SBREFA). Therefore, neither NRCS nor the Commodity Credit Corporation (CCC) is required to delay the effective date for 60 days from the date of publication to allow for congressional review. Accordingly, this rule is effective August 1, 2014.

Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006

OMB published two regulations, 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended). Both regulations have implementation requirements effective as of October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in the Central Contractor Registry. The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and subrecipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier

subawards and executive compensation under those awards.

NRCS has determined that 2 CFR part 25 and 2 CFR part 170 apply to awards of financial assistance provided under its conservation programs. Though the Farm Service Agency (FSA) and NRCS have identified these requirements in program announcements and awards, this interim rule updates the VPA–HIP regulation to reflect these Transparency Act requirements. NRCS will continue to include the requisite provisions as part of its financial assistance awards.

Comments Invited

NRCS invites interested persons to participate in this rulemaking by submitting written comments or views about the changes made by this interim rule. The most helpful comments reference a specific portion of the regulation, explain the reason for any recommended changes, and include supporting data and references to statutory language. All comments received on or before the closing date for comments will be considered. This regulation may be changed because of the comments received. All comments received, as well as a report summarizing each substantive public comment received concerning this interim rule, will be filed in the docket. The docket, including any personal information provided, will be made available for public inspection at: *http://www.regulations.gov.*

Background

This interim rule makes a number of minor changes to existing NRCS rules for various reasons. The 2014 Act made nondiscretionary changes to several conservation programs, including requiring review of operating procedures of the State Technical Committee (7 CFR part 610, subpart C); authorizing the use of the Watershed Protection and Flood Prevention Act to implement the RCPP in Critical Conservation Areas; expanding the definition of ''acreage owned by Indian Tribes'' under the HFRP (7 CFR part 625) and authorizing the use of HFRP to implement RCPP; and simplifying and streamlining the Regional Equity requirement (7 CFR part 662). The Secretary of Agriculture delegated authority to NRCS to implement the VPA–HIP (7 CFR part 1455), requiring conforming amendments to the regulation originally published by FSA. Internal NRCS administrative changes warrant updating the appropriate delegated official in the TSP provision (7 CFR part 652). Finally, slight adjustments are needed to the AMA program regulation (7 CFR part 1465) to maintain its historic consistency with the amended administrative provisions of EQIP.

Discussion of State Technical Committee (7 CFR Part 610, Subpart C)

The Food, Conservation, and Energy Act of 2008 (the 2008 Act) amended section 1261(b)(1) of the 1985 Act to require the Secretary to develop standard operating procedures for committees within 180 days of enactment of the 2008 Act. The 2014 Act further requires the Secretary to review and update State Technical Committee operating standards as necessary. The standard operating procedures outline items such as the best practice approach to establishing, organizing, and effectively utilizing State Technical Committees and Local Working Groups; direction on publication of meeting notices, agendas, and State Technical Committee meeting summaries; how to provide feedback on State Conservationist decisions regarding State Technical Committee recommendations; and other items as determined by the Chief.

The 2014 Act changes regarding the review and update of the operating procedures do not require any changes to the regulations themselves. NRCS has initiated the necessary review of the operating procedures. The operating procedures, and any changes made through the current review of their provisions, will be made available at: *http://directives.sc.egov.usda.gov/.*

The current regulation at 7 CFR 610.24 identifies the programs under Title XII of the 1985 Act about which the State Technical Committee provides advice and input and also provides flexibility to encompass any additional programs authorized by Title XII of the 1985 Act. However, to ensure that there is no confusion, NRCS is amending 7 CFR 610.24 to include a current listing of programs as amended by the 2014 Act.

Discussion of the Watershed Protection and Flood Prevention Program (7 CFR Part 622)

The Watershed Protection and Flood Prevention Act of 1954, as amended (Pub. L. 83–566) (Watershed Operations) authorizes NRCS to install watershed improvement measures to reduce flooding, sedimentation, and erosion damage; improve the conservation, development, utilization, and disposal of water; and advance the conservation and proper utilization of land. Working in cooperation with soil conservation districts and other local sponsoring organizations, NRCS prepares detailed watershed plans that outline soil and water management problems and proposals to alleviate the problems, including estimated benefits and costs, cost-sharing arrangements, and operation and maintenance arrangements.

Section 1271F(c)(3) of the 1985 Act, as amended by the 2014 Act authorizes the Secretary to use the Watershed Operations program to carry out projects for the purposes of RCPP (Subtitle I of Title XII of the 1985 Act, as amended) in Critical Conservation Areas designated by the Secretary. RCPP replaces the Agricultural Water Enhancement Program, Chesapeake Bay Watershed Program, Cooperative Conservation Partnership Initiative, and the Great Lakes Basin Program for soil erosion and sediment control. Like the programs it replaces, RCPP will operate through regulations in place for contributing programs. The other RCPP contributing programs include EQIP, Conservation Stewardship Program, HFRP, and the new Agricultural Conservation Easement Program. NRCS is adding reference to part 622 to identify that eligible watershed projects include projects selected for funding under RCPP. This language is needed to facilitate the use of the Watershed Operations programs to carry out projects for the purposes of RCPP in Critical Conservation Areas identified by the Secretary.

Discussion of the Healthy Forests Reserve Program (7 CFR Part 625)

HFRP is authorized by Title V of the Healthy Forests Restoration Act of 2003 (Pub. L. 108–148). HFRP restores and enhances forest ecosystems in order to: (1) Promote the recovery of threatened and endangered species, (2) improve biodiversity, and (3) enhance carbon sequestration. Land enrolled in HFRP is subject to a forest restoration plan, and NRCS enrolls land through the purchase of a permanent conservation easement, an easement for the maximum duration allowed under State law, a 30-year conservation easement or contract, or through entering a 10-year restoration agreement. In addition to permanent and 30-year easements, HFRP offers an additional enrollment option to Indian Tribes to enroll ''acreage owned by Indian Tribes'' through 30-year contracts.

The 2014 Act amended section 502(e)(3) of the Healthy Forests Restoration Act by adding a definition of ''acreage owned by Indian Tribes'' which includes lands held in Trust by the United States and allotted lands which contain restraints against alienation. This definition is inconsistent with the current regulatory

definition of ''acreage owned by Indian Tribes.'' Therefore, NRCS must amend the definition of HFRP regulation at 7 CFR 625.2 to conform the regulatory definition to the new statutory definition.

Additionally, section 2401 of the 2014 Act identifies HFRP as a covered program under RCPP. As mentioned above, RCPP will operate through regulations in place for contributing programs, and NRCS is adding reference to part 625 to identify that eligible projects include HFRP projects selected for funding under RCPP. In addition, NRCS is adding language to allow the Chief to waive nonstatutory discretionary regulatory provisions and operational procedures where the Chief determines that the waiver will further the purposes of HFRP in accordance with the 2014 Act. This language is needed to facilitate RCPP implementation using HFRP in RCPP partner project areas.

Discussion of the Technical Service Provider (7 CFR Part 652)

The 2014 Act did not make any changes to the implementation the TSP provision; however, internal NRCS administrative changes warrant updating the appropriate delegated official in the TSP provision. Since the TSP final rule was published in 2004, NRCS has modified what official has delegated responsibility for several aspects of the decertification process for TSPs. In particular, the existing TSP regulation identifies the decertification official as the State Conservationist. However, having a relatively large number of State Conservationists as decertification officials increases the difficulty of consistently applying the TSP decertification process. Many TSPs also provide services across State boundaries, further complicating the implementation of TSP decertification policy. NRCS has determined that the decertification process will be more uniformly implemented at the national level.

NRCS is updating subpart C of the TSP rule by replacing the State Conservationist with the Deputy Chief for Programs as the decertification official. The role of the State Conservationist will be to propose decertification, through a notice, identifying the causes for decertification to the Deputy Chief for Programs. Once the Deputy Chief for Programs has issued a written determination, TSPs will continue to be able to appeal in writing to the Chief of NRCS, if necessary.

Discussion of Regional Equity (7 CFR Part 662)

Section 2701 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) amended Subtitle H of the 1985 Act to include Regional Equity. Regional Equity, as established in the 2002 Act, required the Secretary to give priority for funding under conservation programs in Subtitle D of the 1985 Act, excluding the Conservation Reserve Program, the Wetlands Reserve Program, and the Conservation Security Program.

The Secretary was to give priority to approved applications in any States that did not receive an aggregate amount of at least $12 million for those conservation programs specified in the statute. The funding made available to these States in order to reach the $12 million requirement, was taken from those States that had initial aggregate funding allocations of specified conservation programs greater than $12 million. NRCS implemented the Regional Equity provision utilizing multiple funding procedures from fiscal year (FY) 2004 through FY 2008.

The 2008 Act amended the Regional Equity provision, increasing the regional equity threshold used to identify regional equity States from $12 million to $15 million, and adding language to require consideration of the respective demand in each regional equity State. NRCS developed the Regional Equity regulation to reflect the statutory language.

The 2014 Act amends and simplifies the Regional Equity provision. The new Regional Equity provision eliminates the previous April 1 deadline for funding applications, replacing it with a requirement to allow States to establish their ability to utilize funding of at least 0.6 percent of the funds made available for covered conservation programs. States that establish their ability to use the funds would receive at least this amount as part of the normal allocation process. This process is consistent with the agency's regular process used to allocate funding to all States, whether they are covered by the regional equity provision or not.

Therefore, the revised Regional Equity provision can be implemented as an internal administrative matter that does not require a stand-alone regulation. Agency efficiency would be enhanced by having the entire allocation process developed and carried out through the existing internal allocation process. This would improve consistency in the allocation process.

Though the regulation was considered necessary after the 2008 Farm Bill, the new provision in the 2014 Farm Bill is less prescriptive and can be implemented through the agency's regular process to allocate funding, making a regulation unnecessary. Additionally, the report on the Senate version of the 2014 Farm Bill, (the ''Agriculture Reform, Food and Jobs Act of 2013,'' S. 954 (2013)) on which the language in the 2014 Farm Bill was based, indicated that the changes were intended to assist in streamlining agency process, stating that the change to a target of 0.6 percent rather than $15 million was made ''in order to allow allocations to synchronize with annual appropriations.'' (S. Rep. 113–88, Sept. 4, 2013, p. 100.)

Regional Equity is a statutory funding requirement that requires NRCS to shift overall funding levels between States as compared to the results of the regular agency merit-based allocation formulas. Implementing Regional Equity simply adds a step to the process to identify the Regional Equity States and to shift a relatively minor level of funding to each of those States to reach the statutory threshold. Depending upon the available funding for allocation, the threshold may range anywhere from more than $10 million to less than $20 million per State, with much of the threshold being met through the normal program allocation process. In FY 2013, only nine States were identified as Regional Equity States, and only five had a total need to have funds shifted in an amount over $4 million.

The Regional Equity provision does not affect a participant's eligibility in any of the conservation programs, nor affect any roles and responsibilities between the agency and a program participant under a conservation program contract. The existing regulation does not govern any program benefit to which any applicant or participant may be entitled. Removing the current regulation would be consistent with the way this provision was carried out from FY 2002–2008.

The 2014 Act only directs NRCS to promulgate regulations necessary to implement conservation programs, not internal allocation and budget procedures. Therefore, NRCS is removing the Regional Equity regulation from the CFR.

Discussion of Voluntary Public Access and Habitat Incentive Program (VPA–HIP) (7 CFR Part 1455)

The VPA–HIP is authorized by section 1240R of the 1985 Act. VPA–HIP provides, within funding limits, grants to State and Tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land

available for access by the public for wildlife-dependent recreation, including hunting and fishing under programs administered by State and Tribal governments. VPA–HIP is not an entitlement program, and no grant will be made unless the application is acceptable to the CCC. The program was originally delegated to the Administrator of FSA to administer on behalf of the CCC. The program is now delegated to the Chief of NRCS. NRCS seeks to use the same regulation that FSA promulgated on CCC's behalf and update the regulation to reflect the new delegation.

FSA promulgated the final rule for VPA–HIP in July 2010, and OMB published regulations in September 2010 for the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended). Therefore, NRCS is amending the VPA–HIP regulation to add the requirements that grantees must comply with OMB regulations at 2 CFR parts 25 and 170.

NRCS is also updating the VPA–HIP regulation to reflect that the program is subject to the provisions of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Discussion of the Agricultural Management Assistance Program (7 CFR Part 1465)

Through the AMA program, NRCS provides technical and financial assistance to participants in 16 States to address issues such as water management, water quality, and erosion control by incorporating conservation practices into their agricultural operations. Producers may construct or improve water management structures or irrigation structures; plant trees for windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices including soil erosion control, integrated pest management, or organic farming. The 2014 Act did not make any changes to AMA, but NRCS administers AMA conservation program contract requirements consistent with EQIP. Due to changes to the EQIP statute, minor changes are needed to the AMA program regulation to maintain this consistency. The AMA statute did not specify contract duration requirements. NRCS incorporated into the AMA regulation the EQIP contract duration requirements that a contract be in effect for at least one year after final conservation practice implementation. The 2014 Act removed this minimal duration requirement from EQIP, thus NRCS is modifying the AMA regulation to similarly remove this requirement to keep the two programs administrative requirements consistent.

List of Subjects

7 CFR Part 610

Soil conservation, State Technical Committee, Technical assistance, Water resources.

7 CFR Part 622

Watershed projects, Watershed protection, Flood prevention.

7 CFR Part 625

Administrative practice and procedure, Agriculture, Soil conservation.

7 CFR Part 652

Natural Resources Conservation Service, Soil conservation, Technical assistance.

7 CFR Part 662

Administrative practice and procedure, Agriculture, Soil conservation.

7 CFR Part 1455

Agriculture, Animals, Environmental protection, Fishing, Forests and forest products, Grant programs, Hunting, Indians, Indians-land, Natural resources, Recreation and recreation areas, Rural areas, State and local governments, Wildlife.

7 CFR Part 1465

Conservation contract, Conservation plan, Conservation practices, Soil and water conservation.

For the reasons stated in the preamble, and under the authority of 16 U.S.C. 3841(d), the Natural Resources Conservation Service amend parts 610, 622, 625, 652, 662, and the Commodity Credit Corporation amends parts 1455 and 1465 of Title 7 of the Code of Federal Regulations (CFR) as follows:

CHAPTER VI—NATURAL RESOURCES CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

PART 610—TECHNICAL ASSISTANCE

■ 1. The authority citation for part 610 continues to read as follows:

Authority: 16 U.S.C. 590a–f, 590q, 2005b, 3861, 3862.

■ 2. Section 610.24 is amended by revising paragraph (a) to read as follows:

§ 610.24 Responsibilities of State Technical Committees.

(a) Each State Technical Committee established under this subpart will meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations to appropriate officials of the U.S. Department of Agriculture (USDA) who are charged with implementing and establishing priorities and criteria for natural resources conservation activities and programs under Title XII of the Food Security Act of 1985 including, but not limited to, the Agricultural Conservation Easement Program, Conservation Reserve Program, Conservation Security Program, Conservation Stewardship Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Conservation of Private Grazing Land, Grassroots Source Water Protection Program, the Voluntary Public Access and Habitat Incentive Program, and the Regional Conservation Partnership Program. The members of the State Technical Committee may also provide input on other natural resource conservation programs and issues as may be requested by NRCS or other USDA agency heads at the State level as long as they are within the programs authorized by Title XII. Such recommendations may include, but are not limited to, recommendations on:

(1) The criteria to be used in prioritizing program applications;

(2) The State-specific application criteria;

(3) Priority natural resource concerns in the State;

(4) Emerging natural resource concerns and program needs; and

(5) Conservation practice standards and specifications.

* * * * *

PART 622—WATERSHED PROJECTS

■ 3. The authority citation for part 622 continues to read as follows:

Authority: Pub. L. 83–566, 68 Stat. 666 as amended (16 U.S.C. 1001, et seq.); Pub. L. 78–534, 58 Stat. 889, 33 U.S.C. 701b–1.

■ 4. Section 622.11 is amended by adding a new paragraph (b)(4) to read as follows:

§ 622.11 Eligible watershed projects.

* * * * *

(b) * * *

(4) Are implemented pursuant to the Regional Conservation Partnership Program authorized by Subtitle I of Title XII of the Food Security Act of 1985 (Pub. L. 99–198).

* * * * *

PART 625—HEALTHY FORESTS RESERVE PROGRAM

■ 5. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 6571–6578.

■ 6. Section 625.1 is amended by adding a new paragraph (e) to read as follows:

§ 625.1 Purpose and scope.

* * * * *

(e) Pursuant to the Regional Conservation Partnership Program (RCPP) authorized by Subtitle I of Title XII of the Food Security Act of 1985 (Pub. L. 99–198):

(1) Eligible Healthy Forests Reserve Program (HFRP) projects may be selected for funding under RCPP; and

(2) The Chief may modify or waive a nonstatutory discretionary provision or operational procedure of this part if the Chief determines the waiver of such provision or procedure is necessary to further HFRP purposes.

■ 7. Section 625.2 is amended by revising the definition of ''Acreage Owned by Indian Tribes'' to read as follows:

§ 625.2 Definitions.

* * * * *

Acreage Owned by Indian Tribes means:

(1) Land that is held in trust by the United States for Indian Tribes or individual Indians;

(2) Land, the title to which is held by Indian Tribes or individual Indians subject to Federal restrictions against alienation or encumbrance;

(3) Land that is subject to rights of use, occupancy, and benefit of certain Indian Tribes;

(4) Land that is held in fee title by an Indian Tribe; or

(5) Land that is owned by a native corporation formed under section 17 of the Act of June 18, 1934, (commonly known as the 'Indian Reorganization Act') (25 U.S.C. 477) or section 8 of the Alaska Native Claims Settlement Act (43 U.S.C. 1607); or

(6) A combination of one or more types of land described in paragraphs (1) through (5) of this definition.

* * * * *

PART 652—TECHNICAL SERVICE PROVIDER ASSISTANCE

■ 8. The authority citation for part 652 continues to read as follows:

Authority: 16 U.S.C. 3842.

■ 9. Section 652.4 is amended by revising paragraph (g) to read as follows:

§ 652.4 Technical service standards.

* * * * *

(g) The TSP will report conservation accomplishments associated with the technical services provided to the Department and the participant.

* * * * *

■ 10. Section 652.5 is amended by revising paragraph (l)(2)(ii) to read as follows:

§ 652.5 Participant acquisition of technical services.

* * * * *

(l) * * *

(2) * * *

(ii) NRCS will establish TSP payment rates for the various categories of technical services. NRCS will determine the rates according to NRCS regional and local cost data, procurement data, and market data.

* * * * *

■ 11. Section 652.32 is amended by revising the introductory text to read as follows:

§ 652.32 Causes for decertification.

A State Conservationist, in whose State a technical service provider is certified to provide technical service, may submit a Notice of Proposed Decertification to the Deputy Chief for Programs recommending decertification of the technical service provider in accordance with these provisions if the technical service provider, or someone acting on behalf of the technical service provider:

* * * * *

■ 12. Section 652.34 is revised to read as follows:

§ 652.34 Opportunity to contest decertification.

To contest decertification, the technical service provider must submit in writing to the Deputy Chief for Programs, within 20 calendar days from the date of receipt of the Notice of Proposed Decertification, the reasons why the Deputy Chief for Programs should not decertify, including any mitigating factors as well as any supporting documentation.

■ 13. Section 652.35 is revised to read as follows:

§ 652.35 Deputy Chief of Programs decision.

Within 40 calendar days from the date of the notice of proposed decertification, the Deputy Chief for Programs will issue a written determination. If the Deputy Chief for Programs decides to decertify, the decision will set forth the reasons for decertification, the period of decertification, and the scope of decertification. If the Deputy Chief for Programs decides not to decertify the technical service provider, the technical service provider will be given written notice of that determination. The decertification determination will be based on an administrative record, which will be comprised of the Notice of Proposed Decertification and supporting documents, and if submitted, the technical service provider's written response and supporting documentation. Both a copy of the decision and administrative record will be sent promptly by certified mail, return receipt requested, to the technical service provider.

■ 14. Section 652.36 is amended by revising paragraph (a) to read as follows:

§ 652.36 Appeal of decertification decisions.

(a) Within 20 calendar days from the date of receipt of the Deputy Chief for Program's decertification determination, the technical service provider may appeal in writing to the NRCS Chief. The written appeal must state the reasons for appeal and any arguments in support of those reasons. If the technical service provider fails to appeal, the decision of the Deputy Chief for Programs is final.

* * * * *

■ 15. Section 652.37 is amended by revising the introductory text to read as follows:

§ 652.37 Period of decertification.

The period of decertification will not exceed 3 years in duration and will be decided by the decertifying official, either the Deputy Chief for Programs or the Chief of NRCS, as applicable, based on their weighing of all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

* * * * *

■ 16. Section 652.38 is amended by revising paragraph (b) to read as follows:

§ 652.38 Scope of decertification.

* * * * *

(b) In cases where specific individuals are decertified only, an entity or public agency must file within 10 calendar days an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement. In addition, the entity or public agency must demonstrate that, to the satisfaction of the Deputy Chief for Programs, the entity or public agency has taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

PART 662—[REMOVED AND RESERVED]

■ 17. Remove and reserve part 662.

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

PART 1455—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM

■ 18. The authority citation for part 1455 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839.

■ 19. In part 1455, remove the term ''RFA'' with the term ''APF'' wherever it appears.

■ 20. Section 1455.1 is amended by revising paragraph (c) to read as follows:

§ 1455.1 Purpose and administration.

* * * * *

(c) The regulations in this part are administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS).

■ 21. Section 1455.11 is amended by revising paragraphs (a) and (f)(5)(iii)(E), and adding paragraph (f)(5)(iii)(H) to read as follows:

§ 1455.11 Application procedure.

(a) *Announcement of Program Funding (APF).* The CCC will issue periodic APFs for VPA–HIP on *www.grants.gov* subject to available funding. Unless otherwise specified in the applicable APF, applicants must file an original and one hard copy of the required forms and an application.

* * * * *

(f) * * *

(5) * * *

(iii) * * *

(E) A detailed description of how and to what extent public hunting and other recreational access will be increased on land enrolled under a USDA conservation program, or if conservation program land is not available, specify that there is no impact;

* * * * *

(H) A description on how this will create a new program or enhance an existing program.

* * * * *

■ 22. Section 1455.20 is amended by revising paragraphs (b) and (c)(5) to read as follows:

§ 1455.20 Criteria for grant selection.

* * * * *

(b) After all applications have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the announcement for program funding, a list of all applications in ranked order, together with funding level recommendations, will be submitted to the Chief or designee.

(c) * * *

(5) *Strengthening wildlife habitat for lands under a USDA conservation program.* The application will be evaluated to determine whether the project proposes to provide incentives to increase public hunting and other recreational access on land enrolled under a USDA conservation program.

* * * * *

■ 23. Section 1455.30 is amended by revising paragraph (a) introductory text and paragraph (b), and adding a new paragraph (c) to read as follows:

§ 1455.30 Reporting requirements.

(a) Grantees must provide the following to NRCS:

* * * * *

(b) All reports submitted to NRCS will be held in confidence to the extent permitted by law.

(c) Grantees must comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended) and 2 CFR parts 25 and 170.

■ 24. Section 1455.31 is amended by revising paragraphs (e), (f), (h), (i), and (j) to read as follows:

§ 1455.31 Miscellaneous.

* * * * *

(e) *Appeals.* Appeals will be handled according to 7 CFR parts 11, 614, and 780.

(f) *Environmental review.* All grants made under this subpart are subject to the requirements of 7 CFR part 650. Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

* * * * *

(h) *Other regulations.* The grant program under this part is subject to the provisions of 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(i) *Audit.* Grantees must comply with the audit requirements of 2 CFR part 200. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

(j) *Change in scope or objectives.* The Grantee must obtain prior approval from NRCS for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, or recovery of grant funds.

* * * * *

PART 1465—AGRICULTURAL MANAGEMENT ASSISTANCE

■ 25. The authority citation for part 1465 continues to read as follows:

Authority: 7 U.S.C. 1524(b).

■ 26. Section 1465.21 is amended by revising paragraph (b)(2) to read as follows:

§ 1465.21 Contract requirements.

* * * * *

(b) An AMA contract will:

(2) Be for a duration of not more than 10 years;

* * * * *

Signed this 24th day of July, 2014 in Washington, DC

Jason A. Weller,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2014–17993 Filed 7–31–14; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599–AA18

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule; amendments.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending its regulations concerning Guidelines for Designating Biobased Products for Federal Procurement to incorporate statutory changes to section 9002 of the Farm Security and Rural Investment Act (FSRIA) that were effected when the Food, Conservation, and Energy Act of 2008 (FCEA) was signed into law on June 18, 2008. USDA is also announcing that an additional rulemaking activity will be initiated to further amend the Guidelines to address the provisions of the recently signed Agricultural Act of 2014.

DATES: This rule is effective September 2, 2014.

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW.,

Washington, DC 20024; email: *biopreferred@dm.usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority

The Guidelines for Designating Biobased Products for Federal Procurement (the Guidelines) are established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102. (Section 9002 of FSRIA, as amended by FCEA, is referred to in this document as ''section 9002'').

II. Background

As originally enacted, section 9002 provides for the preferred procurement of biobased products by Federal agencies. USDA proposed the Guidelines for implementing this preferred procurement program on December 19, 2003 (68 FR 70730–70746). The Guidelines were promulgated on January 11, 2005 (70 FR 1792), and are contained in 7 CFR part 3201, ''Guidelines for Designating Biobased Products for Federal Procurement.''

On June 18, 2008, the FCEA was signed into law. Section 9001 of the FCEA includes several provisions that amend the provisions of section 9002 of FSRIA. On February 4, 2011, USDA published in the **Federal Register** a direct final rule amending the Guidelines to make them consistent with certain technical changes to section 9002 of FSRIA as required by the FCEA. The technical changes made in 2011 clarified specific terminology and definitions used in the Guidelines.

The purpose of today's rule amendments, which were proposed in the **Federal Register** on May 1, 2012, is to revise the Guidelines to incorporate programmatic changes to section 9002 of FSRIA that were included in the FCEA. These rule amendments do not affect products that have already been designated for Federal procurement preference. Any changes necessary to the existing designation status of products will be established by future rulemaking actions.

III. Executive Summary

USDA is amending 7 CFR part 3201 for two reasons. The first reason is to incorporate statutory changes to section 9002 of the Farm Security and Rural Investment Act made by enactment of the Food, Conservation, and Energy Act on June 18, 2008. The second reason is to make improvements to the existing rule based on several years of operating experience.

A. Summary of Major Provisions of the Final Rule

1. Designation of Intermediate or Feedstock Categories

The designation of intermediate ingredient or feedstock categories will follow the same process that USDA uses in the ongoing designation of product categories. USDA will establish a minimum biobased content for each intermediate ingredient or feedstock category based on an evaluation of the available biobased content data. The minimum biobased content requirement will be set at the highest level practicable, considering technological limitations.

USDA recognizes that, in general, the Federal government does not purchase large quantities of intermediate ingredients and feedstocks. Designating such materials, then, represents a means to include finished products made from such designated materials in the Federal biobased products procurement preference program.

Today's final rule establishes the procedure for designating product categories for those final products that are made from designated intermediate ingredients or feedstocks. The FCEA states that USDA shall ''automatically designate'' final products composed of designated intermediate ingredients or feedstocks if the content of the designated intermediate ingredients or feedstocks exceeds 50 percent of the final product (unless the Secretary determines a different composition percentage is appropriate). Even though the FCEA uses the term ''automatically'' when specifying that final products in these product categories are eligible for the Federal procurement preference, they still must be incorporated into the Guidelines by publication in the **Federal Register**. USDA is establishing a procedure whereby the designation of product categories that include these final products would be done in conjunction with the designation of the intermediate ingredient or feedstock categories.

2. Designation of Complex Assembly Categories

Today's final rule establishes procedures for designating complex assembly products (multi-component assembled products with one or more component(s) being made with biobased material) within the scope of the Federal biobased products procurement preference program. Although section 9001 of FCEA does not specifically mention these multi-component assembled products, USDA believes that including this type of finished product in the BioPreferred program will encourage the increased use of biobased materials and, thus, further advance the objectives of the program.

Today's final rule specifies a procedure for determining the biobased content of complex assemblies. USDA is finalizing an equation that yields the ratio of the mass of biobased carbon in the assembly to the mass of total organic carbon in the assembly. USDA selected this approach because it yields the same biobased content that would be determined by ASTM D6866 if the assembly could be tested.

3. Replacement of ''Designated Item'' With ''Designated Product Category''

Previously, the Guidelines used the term ''designated item'' to refer to a generic grouping of biobased products identified in subpart B as eligible for the procurement preference. The use of this term created some confusion, however, because the word ''item'' is also used in the Guidelines to refer to individual products rather than a generic grouping of products. USDA is replacing the term ''designated item'' with the term ''designated product category.'' In addition, USDA is adding a definition for the term ''qualified biobased product'' to refer to an individual product that meets the definition and minimum biobased content criteria for a designated product category and is, therefore, eligible for the procurement

preference. Although these changes are not required by section 9001 of FCEA, USDA believes the changes add clarity to the rule.

4. Deletion of Mature Markets Exclusion

USDA is deleting the text previously found in paragraph (c)(2) of section 3201.5 that excluded products that were considered to be mature market products. This exclusion has been challenged by numerous stakeholder groups. The Agricultural Act of 2014, which was signed into law on February 7, 2014, includes provisions that remove the mature market exclusion. With today's final rule, USDA has removed the text previously found in paragraph (c)(2). USDA will proceed with a separate rulemaking package to address the provisions of the Agricultural Act of 2014.

B. Costs and Benefits

Type	Costs	Benefits
Quantitative	Unable to quantify at this time	Unable to quantify at this time.
Qualitative	1. Costs of developing biobased alternative products; 2. Costs to gather and submit biobased product information on the BioPreferred Web site; 3. Loss of market share by manufacturers who choose not to offer biobased versions of products.	1. Advances the objectives of the BioPreferred program, as envisioned by Congress in developing the 2002 and 2008 Farm Bills. 2. Opens new (Federal) market for biobased products that USDA designates. 3. Opportunity for new and emerging biobased products to be publicized via BioPreferred Web site.

IV. Summary of Changes

As a result of public comments received on the proposed amendments to the Guidelines, USDA has made changes in finalizing the amendments. These changes are summarized in the remainder of this section. A summary of each comment received, USDA's response to the comment or group of related comments, and the rationale for any change made in the final rule is presented in section V.

A. *7 CFR 3201.1—Purpose and scope.*

This section has been finalized as proposed.

B. *7 CFR 3201.2—Definitions.*

The definition of ''designated intermediate ingredients or feedstocks'' was revised to clarify that finished products made from those materials qualify for preferred procurement only if they contain more than 50 percent (or another amount as specified in subpart B of this part) of the designated intermediate. The definition of ''intermediate ingredients or feedstocks'' was revised to provide clarity to the term ''value added processing'' that is used in the definition.

C. *7 CFR 3201.3—Applicability to Federal procurements; and 7 CFR 3201.4—Procurement programs.*

These two sections have been finalized as proposed.

D. *7 CFR 3201.5—Category designation.*

The text of paragraphs 3201.5(a) and (b) was edited to clarify that USDA will designate product categories rather than individual products. A new sentence was added to paragraph 3201.5(a)(3) to state that when intermediate ingredients or feedstocks are used in the production of products that fall within a previously designated product category, the minimum biobased content for those products (to qualify for the procurement preference) is the minimum specified for the product category in subpart B.

The language previously found in paragraph 3201.5(c)(2) specifying that ''mature market'' products would be excluded from the designation process has been deleted as proposed. However, the new language that was proposed to be added to paragraph (b)(2) has been dropped and the paragraph has been reserved for future use to address changes as a result of the Agricultural Act of 2014.

E. *7 CFR 3201.6—Providing product information to Federal agencies.*

This section has been finalized as proposed.

F. *7 CFR 3201.7—Determining biobased content.*

USDA has revised the procedure for determining the biobased content of final products composed of designated intermediate ingredient or feedstock materials. The revised procedure calculates biobased content as a percentage of the total organic carbon content in the final product. USDA has also revised the equation for calculating the biobased content of complex assemblies to be based on the ratio of the amount of biobased material in the assembly to the amount of total organic carbon in the assembly.

G. *7 CFR 3201.8—Determining life cycle costs, environmental and health benefits, and performance.*

USDA has revised the new title for the section, ''Determining relative price, environmental and health benefits, and performance,'' by deleting the word ''relative.''

H. *7 CFR 3201.9—Funding for testing.*

This section has been reserved, as proposed.

V. Discussion of Public Comments

USDA solicited comments on the proposed amendments for 60 days ending on July 2, 2012. USDA received 19 comments by that date. Three of the comments were from individual citizens, 12 were from trade groups, and 4 were from biobased product manufacturers. The comments are presented below, along with USDA's responses, and are grouped by the Code of Federal Regulation (CFR) section numbers to which they apply.

General Comment on BioPreferred Program

Comment: One commenter stated that, given the need for consistency between the two elements of the overall BioPreferred program, and the addition of the ingredients and feedstocks to both elements of the program, USDA should combine both parts of the program into a single program to most effectively effectuate Congressional intent. The commenter recommended that all products that qualify for inclusion in USDA's BioPreferred Catalog should also qualify for Federal procurement preference. The commenter stated that designated product categories of biobased products approved for Federal procurement preference could be used as an organizing guide for the catalog. Having a difference between the list of products that can be labeled and those that are subject to a purchasing preference is confusing. The commenter also stated that, as a corollary, all products approved for procurement should be entitled to use a label. The commenter stated that it would remain entirely voluntary with the manufacturer or seller whether to place a label on the product. The commenter stated that the label has value as a specifying tool, where a government contractor soliciting bids from suppliers can simply require that products be within categories found in the catalog and must bear a label or be qualified to bear a label. The commenter stated that

these changes would be easy to apply, would simplify the program, and would make it more effective.

Response: USDA appreciates the recommendations provided by the commenter. USDA will consider these and other comments that relate to the structure and operation of the BioPreferred program and will, at a later date, evaluate changes that could be made to streamline the program.

A. *7 CFR 3201.1—Purpose and scope.*

No comments were received on the revisions proposed for this section.

B. *7 CFR 3201.2—Definitions.*

Comment: One commenter noted that the terms ''distinct materials'' and ''component'' (used in the definition of ''complex assembly'') have not been defined. The commenter stated that, if USDA continues to pursue the approach of measuring biocontent on a component-by-component basis, the following definition of component would be appropriate: ''a component is a homogeneous material in a uniquely identifiable part or piece of an assembled product that (a) is required to complete or finish an item; (b) performs a distinctive and necessary function on the operation of a system; or (c) is intended to be included as part of a finished item.'' The commenter added that the definition of homogeneous is ''uniform composition throughout an item's entirety.'' The commenter stated that many automotive components are made of various types of materials including metals that would be included in the component weight if a component were defined as a heterogeneous material. For instance, a seat consists of foam, framework, brackets, buckle mechanisms, fabric, etc. The commenter concluded that because not every part of a seat assembly can be biobased, only the homogeneous materials that can be biobased should be included in the component definition and biobased content calculation.

Response: USDA agrees with the commenter that the recommended definitions may be necessary when designating complex assemblies used within the automotive industry. However, because the Guidelines are the regulatory foundation for the entire program, USDA believes that they need to remain generic and allow flexibility in implementation. In industry-specific situations such as those described by the commenter, the Guidelines definitions can be supplemented on a case-by-case basis by applicable definitions included in the regulatory text for the particular complex assembly being designated.

Comment: One commenter agreed that the definition of ''complex assembly'' is appropriate, but stated that the proposed rulemaking should provide additional guidance by including examples of complex assemblies. According to the commenter, carpets would fall under the definition of complex assemblies because of their various components, such as the carpet itself, carpet backing, adhesive, insulation material, etc. Each of these components may be composed of varying levels of biobased materials. The commenter stated that many of these biobased products (components) may meet the biobased content criteria by themselves within the complex assembly definition. However, there will be instances where certain renewable chemicals (such as an enzyme in cleaning fluids), intermediate ingredients or feedstocks may not meet the threshold in the ''designated product category.'' Therefore, it is not clear from the proposed rulemaking whether these biobased products will be accounted for in the final biobased complex assembly products. The commenter stated that more clear guidelines through **Federal Register** comments are requested for biobased content requirements of complex assembly biobased products.

Response: USDA appreciates the commenter's support of the proposed definition of ''complex assembly.'' With regard to the commenter's example of an enzyme used in a cleaning fluid, USDA points out that a product like cleaning fluid would not be a complex assembly. Cleaning fluids and similar products may contain several ingredients, some of which may be biobased and some of which may not be. In such a product, however, the ingredients are blended together to form a uniform mixture from which a sample can be taken and tested for biobased content using ASTM D6866. Thus, in such a product, each ingredient that contributes toward the overall biobased content of the product is counted, regardless of the amount.

Comment: One commenter stated that, in the definition of intermediate ingredient or feedstock, USDA should consider further clarification regarding biomaterials that are used as ''fillers'' (e.g., corn starch, bamboo fiber, etc.). The commenter recommended that these fillers have been adequately ''processed'' to be distinguished from raw agricultural ingredients and should be part of the designation allowance.

Response: USDA agrees with the commenter that ''fillers'' used as routine ingredients in biobased products have been adequately processed and should count toward the overall biobased content of the final product. USDA does not consider the role that the various biobased ingredients may play in the formulation of finished products (i.e., carriers, fillers, or inactive ingredients versus active ingredients) when determining the minimum required biobased content. Thus, any biobased material that is an ingredient in the tested product would count toward the reported biobased content of the product.

Comment: Another commenter recommended the following modification to the definition of intermediate ingredient or feedstock: *Intermediate ingredient or feedstock.* A material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials that have undergone a significant amount of value added processing (including thermal, chemical, biological, and *or a significant amount of* mechanical processing), excluding *harvesting* operations, offered for sale by a manufacturer or vendor and that is subsequently used to make a more complex compound or product.

Response: USDA agrees that the commenter's suggested revisions to the proposed definition clarify that the value added processing steps may be thermal, chemical, biological, or mechanical. The definition in the final rule has been revised as suggested by the commenter.

Comment: One commenter suggested amending the definition of ''intermediate ingredient or feedstock'' by inserting ''*(including a renewable chemical)''* after ''material or compound.'' The commenter also suggested adding a definition of ''renewable chemical,'' as follows: ''*The term 'renewable chemical' means a monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass.*'' The commenter stated that these amendments will be consistent with the definitions of ''intermediate ingredient or feedstock,'' and ''renewable chemical,'' as defined in recent legislation in the 112th Congress (viz. S.2155, S.3240, and H.R.5955.)

Response: USDA based the proposed definitions on the language in the 2008 Farm Bill. USDA will re-visit the definitions and other aspects of the BioPreferred program subsequently, given passage of Agricultural Act of 2014.

Comment: One commenter stated that the proposed definition of ''intermediate ingredient or feedstock'' is inconsistent with both the statutory definition and

the definition of the same term in the labeling rule. The commenter stated that the proposed definition conflicts with the statute's definition of the same term, has unintended negative consequences to the program, and should not be adopted. The statute requires only that an intermediate ingredient or feedstock be a qualifying biological material that is ''subsequently used to make a more complex compound or product.'' The commenter stated that USDA is proposing to narrow Congress's definition to materials: ''That have undergone a significant amount of value added processing (including thermal, chemical, biological, and mechanical), excluding harvesting operations, offered for sale by a manufacturer or vendor that is subsequently used to make a more complex product.'' The commenter stated that USDA explains that this narrowing is necessary to distinguish between raw materials and intermediate ingredients or feedstock, so that such raw ingredients will not qualify for government purchases under this program. The commenter further stated that the proposed rule does not explain why this distinction is necessary, and that the commenter saw no apparent reason. The commenter stated that, in reality, depending on the process and end-product involved, a ''raw'' forestry or agricultural product may range from many steps removed from the end-product to one step away. The commenter provided the example of a log, produced by harvesting a tree, and processing the tree to remove limbs and cutting the resultant stem to a length deemed suitable for further manufacture into any of a number of products or feedstocks. An example of further processing would be the debarking of the log, slicing it into veneer and gluing the veneer together to make laminated veneer lumber, clearly a more complex product than the log. The commenter stated that in the plain words of the statute, a log is a ''forestry material'' ''that is subsequently used to make a more complex compound or product.'' Thus, according to the commenter, it should qualify under the statute as an ingredient and that no program advantage or disadvantage is provided by excluding it. In addition, with respect to forestry materials, and in light of the stated goal of advancing rural domestic economic activity through the program, the commenter recommended that USDA reference the categories of forestry sources identified in ASTM D7612–10 to describe forestry ingredients or feedstocks. The commenter stated that reference to this ASTM standard can be useful for manufacturers seeking to specify standards to suppliers when procuring ingredients or feedstock for the manufacture of biobased products.

Response: For any type of material or product to be ''designated'' for a procurement preference, there must exist at least two competing versions of that material or product (so that the biobased material may be preferred). In the case of the BioPreferred program, the two competing versions are almost always one that is composed of, or derived from, petroleum-based material and another version in which a substantial percentage of the petroleum-based ingredient is replaced by an ingredient made from renewable biomass. The designation process results in the requirement that Federal agencies give a preference to the competing product made from renewable biomass. In the view of the BioPreferred program, then, a biobased product is generally an alternative to a petroleum-based product that serves the same functional purpose. It follows, therefore, that USDA would not consider ''designating for preferred procurement'' a category of products for which there is only one ''version.'' For example, it may be possible to produce hydraulic fluid from either crude oil or soybeans. While the two different versions of the hydraulic fluid compete in the marketplace and hydraulic fluid could be ''designated'' to give a procurement preference to the soybean-derived version, the crude oil and the soybeans do not directly compete with each other within the marketplace and neither would be ''designated'' by the BioPreferred program. Likewise, USDA does not believe that a bale of cotton or a log are items that should be designated for preferred procurement. However, once the barrel of crude oil or the bale of cotton or the log undergo various processing steps, the resulting materials enter the marketplace as intermediate ingredients or feedstocks and compete for selection as the building blocks for the manufacture of consumer-use products. The biobased version of these competing intermediate ingredients or feedstocks would then be candidates for designation, as would the finished products manufactured from them. USDA recognizes and agrees that the number and extent of the ''processing steps'' can vary depending on what the raw materials and the finished products are. However, USDA continues to believe that the definition of an intermediate ingredient or feedstock should exclude harvested commodities such as raw cotton, soybeans, and logs.

USDA also notes that, in response to the Agricultural Act of 2014, it will make additional revisions to the Guidelines in subsequent rulemaking.

C. *7 CFR 3201.3—Applicability to Federal procurements; and 7 CFR 3201.4—Procurement programs.*

No comments were received on the revisions proposed for these sections.

D. 7 CFR 3201.5—Category designation.

Comment: One commenter questioned whether setting a minimum biobased content for each intermediate ingredient or feedstock category is needed. The commenter stated that what is most critical is the total biobased content of the product in which the intermediate ingredient or feedstock is used.

The commenter stated that the FCEA requires that a minimum biobased content be established to designate intermediate ingredients and feedstocks and that the FCEA further requires the USDA to automatically designate finished products composed of designated intermediate ingredients and feedstocks, if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the product (unless the Secretary determines a different composition percentage is appropriate). The commenter stated that these FCEA requirements are then interdependent. According to the commenter, the net effect appears to create an entirely different, and potentially conflicting, route to finished product designation. The commenter provided the following example; assume USDA establishes a minimum biobased content for designated intermediate category ''polyolefin resins'' at 50 percent. If a polyolefin has 100 percent biobased content, then this polyolefin would be a designated intermediate. Next consider a blend consisting of 60 percent of this designated polyolefin intermediate with 40 percent of fossil-based polyolefin. Finished products made with the blend would be ''automatically designated'' because the blend contains at least 50 percent of a designated intermediate. Now suppose a manufacturer of non-woven fabrics makes ''erosion control materials'' of this blend—these products would be automatically designated based on the proposal in this **Federal Register** notice. The commenter next stated that the minimum biobased content for ''Erosion Control Materials'' was established as 77 percent. The commenter stated that the current proposal would automatically designate and allow a product with 60 percent biobased content to be designated even though it is below the 77 percent minimum content required for finished product designation of ''erosion control materials.''

Another commenter also disagreed with the concept of ''automatic designation'' for finished products, agreeing with the first commenter that this represents a separate and potentially conflicting route to designation of finished products. The commenter provided, as another example, a finished product formulated with 50 percent of a designated biobased intermediate, said intermediate having 20 percent biobased content, then the net biobased content of the finished product is only 10 percent. The commenter stated that this is well below the minimum biobased content established for many of the product categories. The commenter recommended that all finished products be subject to the minimum biobased content established for the relevant product category. The commenter stated that there should not be an alternative ''automatic designation'' process, as such an alternative process would merely cause confusion and potentially harm the credibility of the BioPreferred program.

The first commenter recommended a more streamlined approach for the USDA to simply ''approve'' biobased intermediates which meet the following criteria: (a) They have ''undergone significant value-adding processing,'' and (b) the biobased content is quantitatively reported with adequate supporting data. The commenter further recommended that the biobased content is reported and has supporting documentation (i.e., ASTM D6866). The commenter stated that it is reasonable for the supplier of these intermediate ingredients and feedstocks to be responsible for applying for and obtaining designation for these materials. Then the finished product manufacturers could calculate and report their biobased content as described elsewhere in the proposal.

The commenter acknowledged the challenges of changing the requirements of the FCEA but stated that the BioPreferred program may want to wait until the FCEA requirements have been amended, and then launch a more streamlined and consistent method of handling intermediates, rather than launch a potentially flawed method now.

Lastly, the commenter stated that the FCEA requires use of the terminology ''designate'' with respect to intermediate ingredients and feedstocks. However the commenter stated that use of this term is confusing because the BioPreferred program also ''designates'' finished products that are directly available for Federal procurement. To avoid confusion, the commenter recommended that USDA may want to consider use of alternative terminology, such as ''approved.''

Response: The commenter questioned the need to set minimum biobased contents for intermediate ingredients or feedstocks but then, correctly, pointed out that the FCEA specifies that USDA set such minimum contents. USDA intends to continue to evaluate and establish the minimum biobased content for each designated product category on a case-by-case basis.

USDA evaluated the commenter's statements that the current requirements of the FCEA create potentially conflicting routes to finished product designation and believes that such conflicts can be avoided. USDA has always considered that the term ''designated'' applies to a generic grouping of biobased products that is eligible for the procurement preference. Thus, individual products are not designated and are not eligible for the procurement preference unless they meet the definition of (and, therefore, are included within) a designated product category. When setting the minimum biobased content for a designated product category, USDA typically considers the biobased content of several representative products that fall within the product category and selects the level found to be appropriate. The selected minimum level is usually not based on the lowest or the highest biobased content among the products. Rather, the selected minimum is considered typical of products within the category. USDA expects this same process to be followed when designating finished products made from designated intermediate ingredients or feedstocks. Thus, individual finished products will be required to meet the minimum biobased content that is established for whatever product category the product falls within.

With regard to the commenter's example of a polyolefin resin, if such an intermediate ingredient or feedstock material were designated, USDA would investigate and consider for designation those finished product categories (not individual products) that could be made from the intermediate. If the intermediate ingredient were used by a manufacturer of erosion control materials, the applicable minimum biobased content for the product would still be 77 percent because that product category has already been designated and there are individual products available that meet the 77 percent. The product described by the commenter would fall into the designated product category of ''erosion control materials'' but would not be eligible for preferred procurement. The final rule has been revised to clarify that when final products made from intermediate ingredients fall within an existing designated product category, those products are subject to the minimum biobased content and other established criteria for the applicable product category.

If, on the other hand, a manufacturer used the designated polyolefin intermediate to manufacture a product that does not fall into an already-designated product category, USDA would move to designate a new product category based on that product and that product's biobased content (along with the biobased content of other products that fall within the new designated product category) would be considered when setting the minimum biobased content for the new designated product category.

Response: USDA points out that the use of the term ''designate'' is consistent with the language in the FCEA. In addition, once an intermediate ingredient or feedstock category is designated by rulemaking, Federal agencies would have the same legal obligation to purchase the biobased version of products within the category as they do when purchasing products within designated finished product categories. USDA acknowledges that such purchases of designated intermediate ingredients or feedstocks by Federal agencies may rarely occur, but the obligation to give a preference to the biobased version of these materials, if they are ever purchased, would still apply.

Comment: One commenter expressed concern about how USDA will determine what is a ''generic grouping'' under the proposed definition of ''*designated intermediate ingredient or feedstock category.*'' The commenter stated that groupings could be broad, such as vegetable oils, fibers, resins, polymers, polyols, polyesters, etc., or the groupings could be more narrow such as soybean oil (including crude, refined, deodorized, epoxidized). The commenter further stated that it is critical that USDA seek extensive industry input on how best to define ''generic groupings'' prior to proposing categories for designation. Groupings should take into account the chemical structure of a material or compound as well as functionality and end-use applications. The commenter recommended that USDA establish a process through its Web site and stakeholder meetings to solicit nominations for intermediate ingredients and feedstocks that should be considered for designation prior to

issuing proposed rulemakings. This would allow USDA to view the range of commercially available biobased intermediate ingredients and feedstocks and sort them by chemical class, functionality, and end use application to best determine how to establish ''groupings'' for the purpose of designations. The commenter stated that USDA should remain flexible about how narrow or broad to make the ''groupings'' until it has solicited and carefully evaluated information from industry stakeholders. The commenter also stated that USDA should establish a process whereby final product categories not designated as part of the initial intermediate ingredient and feedstock rulemaking have the opportunity to petition for inclusion at a later date.

Response: USDA appreciates the commenter's recommendations and agrees that extensive industry input will be critical for the success of the program. USDA believes that the BioPreferred Program Guidelines, as being finalized in this rulemaking, establishes a framework whereby USDA can work in conjunction with stakeholders to implement the requirements of the FCEA.

Comment: One commenter acknowledged that the USDA will establish a minimum biobased content for each intermediate category, entirely analogous to how it establishes a minimum biobased content for each finished product category. The commenter then pointed out that this could effectively double the effort needed to manage the BioPreferred program, with minimal benefit. Rather, the commenter recommended that the USDA establish one minimum biobased content for all ingredients and feedstocks. This universal minimum should be high enough to be meaningful, to represent a real technical advance. The commenter stated that it is obviously more challenging to make biobased some classes of materials as compared with others, so the minimum should not be so high as to rule out many deserving materials in these more challenging areas. The commenter recommended that a universal minimum biobased content of 20 percent strikes the right balance.

Response: USDA disagrees with the concept of setting a ''universal'' minimum biobased content. Setting the minimum biobased content of categories on a case-by-case basis, as has been done since the program began, allows flexibility to address both those categories that can be formulated with very high biobased contents and the ''more challenging'' areas mentioned by the commenter. USDA believes there are numerous intermediate categories where the commenter's recommended 20 percent minimum biobased content would be significantly below what is achievable.

Comment: One commenter stated that limits of certain performance applications or compliance with federal specifications in some end-use applications may not allow for the final product to contain 50 percent of the biobased material. This lower limit should be considered case by case.

Response: As discussed in the previous response, USDA expects that minimum biobased content requirements will continue to be set on a case-by-case basis as they have in the past by considering the availability, performance, and cost of representative products within each product category being evaluated for designation.

Comment: USDA received numerous comments on the proposed revision to replace the ''mature market'' exclusion in paragraph 3201.5(c)(2) with language proposed to be added as a new paragraph (b)(2) stating USDA's intention to ''designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased material.'' Some of the comments were in agreement with the proposal, but most opposed both the original language in the paragraph and the proposed revision. The consensus among those opposed to either the original paragraph 3201.5(c)(2) or the text proposed to be added as paragraph (b)(2) is that the date of entry into the marketplace and extent of national market penetration should not be a factor in determining whether a product category is designated for preferred procurement.

Response: The Agricultural Act of 2014, signed by the President on February 7, 2014, includes new provisions that effectively remove both the ''mature markets'' and the proposed ''new and emerging markets'' considerations when designating product categories and intermediate ingredient or feedstock categories. USDA has decided that in this final rule the proposed new language for paragraph 3201.5(b)(2) will be dropped and the paragraph will be reserved. USDA is today announcing its intention to develop rulemaking actions to propose and promulgate another final rule amending the Guidelines to incorporate the appropriate new language into paragraph 3201.5(b)(2).

Comment: One commenter stated that the deletion of the mature markets exclusion from 3201.5(c)(2) must be carried into the USDA Voluntary Labeling Program. The authorizing statute requires USDA to maintain consistency between the two programs.

Response: As discussed in the response to the previous comment, the Agricultural Act of 2014 removed the exclusion of products that are considered to be mature market products. USDA intends to proceed with two new rulemaking activities in response to the provisions of the Agricultural Act of 2014; one proposing additional amendments to the Guidelines and one proposing corresponding amendments to the voluntary labeling rule.

Comment: One commenter stated that the current proposed rule does not fit the needs or technical requirements for the automotive sector. The commenter stated that the fundamental equation proposed for determining biobased content in automobiles will not work for vehicles as the denominator cannot be standardized and will not remain a fixed number. The commenter also stated that there are further deficiencies in the proposal with lack of definitions for key terms and concepts. The commenter stated that the proposed use of the ASTM method for determining biobased content is not practical for the automotive applications. The commenter concluded that it is not clear what alternative proposals might look like given the lack of definition and uncertainty of technical criteria, the rapid changes in automotive materials technologies, feedstocks, sources, availability of materials, and infrastructure to manage the materials.

Response: USDA agrees with the commenter that the designation of product categories within the automotive industry will be difficult. USDA also agrees that at this stage in the evolution of the BioPreferred program the designation of an automobile as a complex assembly would be extremely difficult. USDA has no plans to attempt such a designation within the immediate future. USDA expects that when complex assemblies such as those found in the automobile industry (and many others) are designated, case-by-case alternative equations may be necessary. At this point in the process of considering the designation of complex assemblies, it is not possible to anticipate all cases where an exception to the generic process adopted today may be needed.

USDA does expect, however, that some automotive components, and the biobased intermediate ingredients and feedstock used to make those components, will be designated within the next few years. Biobased

intermediate ingredients that could be used to make products such as carpets and carpet backing, upholstery fabrics or headliners, and foam that might be used in automobile seats are expected to be evaluated for designation soon. USDA believes that with the cooperation of the manufacturers the designation of products such as these can be accomplished. USDA points out that a parallel to the automobile example would be a house or office building where components such as carpets, plastic insulating foam, composite panels, and interior paints have been designated by the BioPreferred program but the actual house or office building has not.

E. *7 CFR 3201.6—Providing product information to Federal agencies.*

No comments were received on the revisions proposed for this section.

F. *7 CFR 3201.7—Determining biobased content.*

Comment: One commenter stated that the proposed methodology for determining biobased content of products based on intermediates could use some additional requirements. Testing should still be required on these materials to ensure the biobased content is truly what is claimed. The testing fee for procurement is very inexpensive compared to other certification programs and the rules that are currently in place as far as changes in formulations and products similar to compositions that already have certification cuts down on multiple testing fees. Another alternative could be to develop simpler test methods based on NMR data/IR spectra to determine the amount of a specific biobased material in a complex mixture.

Response: While the voluntary labeling program requires independent testing to confirm the biobased content of products for which certification is sought, the preferred procurement program requires only that manufacturers certify the claimed biobased content. However, the Guidelines (at 3201.7(a)) require that manufacturers must provide information to verify the biobased content of products offered for preferred procurement if such verification is requested by USDA or other Federal agencies. Section 3201.7(c) states that verification of biobased content must be based on third party testing using ASTM D6866. Also, as part of the designation process, USDA routinely obtains and tests several representative products from the product categories being designated. USDA agrees that documenting the biobased content of intermediate ingredients or feedstocks, as well as finished products, is critical to the success of the program. USDA plans to increase the effort applied to confirming manufacturers' biobased content claims, as resources allow. Also, efforts to develop alternative test methods are continuing and USDA will consider allowing the use of an alternative method once it has been approved by a certifying entity such as ASTM.

Comment: One commenter stated that, in the proposed rule, USDA does not address the documentation required to support the calculated biobased content of the finished product. The commenter stated that, logically, the finished product manufacturer applying for designation would disclose the full formulation to USDA, including suppliers of these ingredients. The commenter further stated that it is reasonable that the suppliers of ingredients would provide documentation supporting the biobased content of that ingredient. According to the commenter, such documentation may present a potential issue regarding confidential business information (CBI). The commenter proposed the following two options for consideration by USDA in cases where the manufacturer wishes to protect CBI: (a) Including ''undisclosed ingredients'' in the formulation—the manufacturer could not claim any contribution toward overall biobased content from these ingredients because the biobased content of those ingredients would not be verifiable; and, (b) Claiming biobased content contributions from ''undisclosed ingredients''—if the manufacturer wanted to claim contributions from such undisclosed ingredients toward overall biobased content, the manufacturer would have the option of paying for and having ASTM D6866 performed on the finished product itself.

Response: USDA disagrees that the submission of confidential product formulation data would be necessary under the BioPreferred program. Section 3201.7(a) requires that manufacturers must certify that their product meets the minimum biobased content requirements for the designated product category. Thus, the requirement to certify the biobased content of a product does not involve the submission of specific formulation data, confidential or otherwise. The section further states that manufacturers must, upon request, provide USDA and Federal agencies information to verify the biobased content for products certified to qualify for preferred procurement. Section 3201.7(c) states that verification of biobased content must be based on third party testing using ASTM D6866. Because intermediate ingredients or feedstocks, and the finished products made from them, can be tested using ASTM D6866, it is expected that test results would be submitted as verification of biobased content. No specific formulation data would be required or expected.

Comment: One commenter expressed concern about the procedure that USDA is proposing for determining the biobased content of final products made with intermediate ingredients and feedstocks. The commenter stated that USDA's proposed approach is not consistent with the statutory language. The commenter stated that the statutory language is clear that products composed of more than 50 percent (or a different percentage as determined by USDA) of the designated intermediate ingredient or feedstock must be automatically designated. The commenter stated that the statute does not direct USDA to take into account the biobased percentage content of the designated intermediate ingredient or feedstock when calculating the 50 percent. According to the commenter, if a final product contains 50 percent by mass weight of a designated intermediate ingredient or feedstock, the final product should also be designated even if the designated intermediate ingredient or feedstock has a biobased content of less than 100 percent. Also, if a final product contains more than one designated intermediate ingredient or feedstock then the mass weight of each should be added together to determine if the overall content reaches 50 percent or more. The commenter also stated that to be consistent with the intent of the statute and the BioPreferred Program Guidelines, the mass weight calculation should be based on organic carbon content only and not other materials in the final product such as water or inorganic materials.

The commenter recommended the following modification to proposed section 3201.7 (c)(2): *Final products composed of designated intermediate ingredient or feedstock materials.* The biobased content of final products composed of *designated* intermediate ingredient or feedstock materials will be determined by multiplying the percentage by weight (mass) of each intermediate ingredient or feedstock material in the final product times the percentage of biobased content of each intermediate ingredient or feedstock material, *calculating the percentage by weight (mass) that each designated intermediate ingredient or feedstock material represents of the total organic carbon content of the final product and*

summing the results (if more than one *designated* intermediate ingredient or feedstock is used), and dividing the resultant value by 100.

Another commenter stated that the text and equations in 3201.7(c)(2) and (3) need to be revised. The commenter stated that the calculation should be based on the organic carbon content of the product and provided a recommendation for a revised equation.

Response: USDA evaluated the comments and recommendations submitted by these commenters and agrees with most of their positions. Most significantly, USDA agrees that the equations presented in the proposed amendments to the Guidelines should be revised so that they determine the biobased content of complex assemblies and finished products made from designated intermediate ingredients or feedstocks based on the total mass of organic carbon in the components of the assembly or in the finished product. The equations have been revised in today's final rule.

The first commenter is correct that the statutory language in the FCEA states that products composed of more than 50 percent of designated intermediate ingredients or feedstocks must be automatically designated. However, USDA believes that the current approach of designating ''product categories'' rather than individual products is appropriate even when finished products are made from intermediate ingredients that have been designated. The designation of product categories that include these finished products involves multiple steps. These steps are shown in Figure 1 and are discussed in the paragraphs that follow Figure 1.

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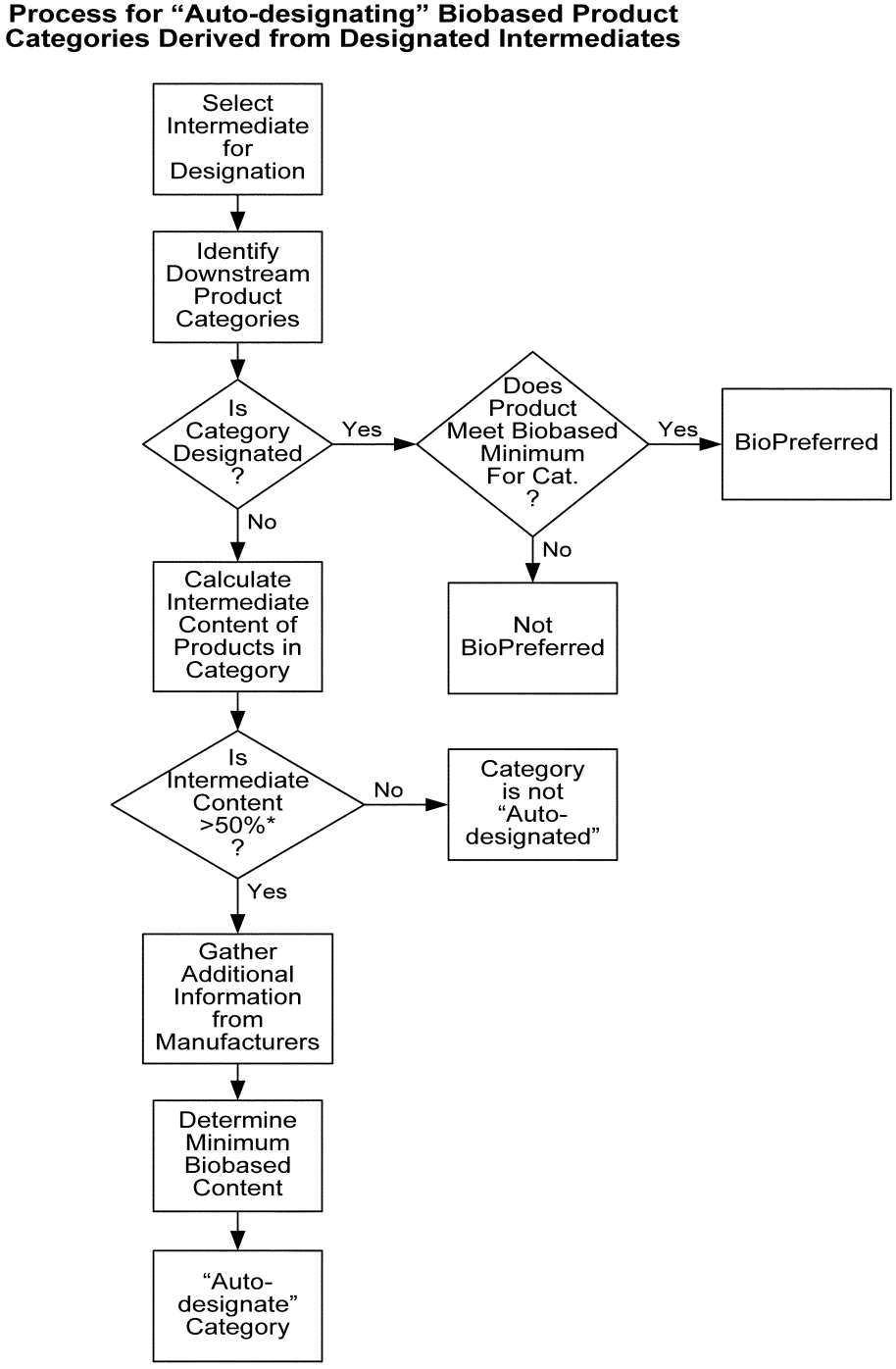

Figure 1. Automatic Designation Process Flow Chart

First, at the time that an intermediate ingredient or feedstock category is selected for designation, the categories of finished products that are made from the intermediate ingredients or feedstocks will be identified. The list of product categories that is developed will then be compared to the list of previously designated product categories. For those individual products that fall within a product category that has already been designated, the applicable minimum biobased content to qualify for preferred procurement is the minimum specified for the product category in subpart B of section 3201. Those individual products that do not fall within an existing

designated product category will be investigated to determine whether their formulation includes more than 50 percent [1] of the intermediate ingredients or feedstocks selected for designation. If the products contain more than 50 percent [1] of the selected intermediates, USDA will proceed with ''auto-designating'' a new product category based on the products evaluated. If new product categories are needed, USDA will gather information on as many individual products from within the new product category as possible. Biobased content information from the testing of individual products (using ASTM D6866) will be evaluated and a minimum biobased content set for the new product category. Then, after the designation of the new product category (based on products composed of more than 50 percent designated intermediate ingredients), manufacturers can determine whether their individual products qualify for preferred procurement. They can do this by using the procedure in the final Guidelines to determine the biobased content of their products and comparing that to the minimum biobased content established for the product category.

As stated above, the equations for determining the biobased content of complex products and finished products was revised in the final rule. The first commenter's recommended revision to the procedure for calculating the biobased content of finished products made from designated intermediate ingredients was generally accepted. However, a second sentence was added to the procedure because when determining whether an individual finished product meets the established minimum biobased content of a product category, biobased intermediate ingredients that have not been designated may also be present and should be included in the determination of the total biobased content of the product.

Comment: One commenter stated appreciation for USDA's intent that the biobased content of complex assemblies reflects only that portion of the entire assembly that has the potential to be biobased. However, the commenter expressed concerned with the use of vague terms such as ''potentially'' biobased as its use does not clarify who or what entity will make the determination as to what is potentially biobased. The commenter suggested that use of the term ''organic carbon'' is a more precise and scientifically valid term to identify components which are potentially biobased. According to the commenter, use of this term also has the benefit of congruence with the terminology used in ASTM D6866.

The commenter expressed doubts as to whether reporting only the percentage of organic carbon that is biobased is sufficient to drive the desired behaviors that USDA seeks. The commenter stated that many beneficial innovations in complex assemblies entail replacing glass, steel, etc. with advanced polymer resins and composites. This modification has the effect of increasing the overall organic carbon content of the assembly, but because it increases the denominator of the complex assembly calculation, could decrease the calculated biobased content and be counterproductive. The commenter recommended that two metrics be reported for complex assemblies: a) The weight percent of the entire assembly which is organic carbon, and b) the percentage of that organic carbon that is biobased. The commenter stated that designation of complex assemblies should be based on some combination of these two metrics, in such a way to incentivize increased organic carbon content and increased percentage of that organic carbon that is biobased.

The commenter also recommended that when determining the total biobased content of complex assemblies, all materials that have biobased content should be included in the calculations and not just those materials that meet a USDA proposed minimum biobased content. The commenter provided as an example a complex assembly that is construed from other ''finished products'' (i.e., subassemblies) that are part of the BioPreferred catalog and have minimum biobased content levels set per the catalog. The commenter recommended that even if the subassemblies do not meet the minimum biobased content per the BioPreferred catalog, they should still be included in the calculation as contributing to the overall biobased content. The commenter stated that such inclusion will: (a) Provide a higher level of accuracy when determining total biobased content of a complex assembly, and (b) be consistent with USDA's emphasis ''to improve demand for biobased products'' and ''to spur development of the industrial base through value-added agricultural processing and manufacturing.''

Response: USDA agrees with several commenters who recommended using ''total organic carbon'' as the basis for determining biobased content and has revised the procedures accordingly. This eliminates the need to consider whether materials or components have the potential to be biobased. USDA also agrees with the commenter that all biobased material in a component should be included when determining the biobased content. The calculation procedure does not distinguish between components that ''finished products'' and those that are not, so all biobased content in a complex assembly is counted.

Comment: One commenter stated that they are concerned about how USDA will reliably determine which individual components ''could'' contain biobased material. The commenter urged USDA to establish a process through its Web site as well as through stakeholder meetings to solicit nominations for which complex assemblies should be considered for designation and to collect available information on components that are being made with biobased materials. In terms of components that ''could'' contain biobased materials, the commenter urged USDA to only include components for which there are commercially available biobased alternatives that meet relevant industry performance standards.

Response: USDA has revised the procedures to eliminate the need to determine whether components ''could'' contain biobased material. However, USDA agrees with the commenter that stakeholder involvement is critical to the designation of complex assemblies. USDA expects that there will be extensive efforts to gather information and opinions from stakeholders. USDA also agrees that commercial availability of biobased components that meet relevant industry performance standards is an essential criteria that must be met.

G. *7 CFR 3201.8—Determining life cycle costs, environmental and health benefits, and performance.*

Comment: Numerous commenters provided opinions on whether, and to what extent, life cycle analysis (LCA) requirements should be included in the designation process for biobased products. Three commenters stated that USDA should retain the requirement for an LCA to assure that qualified products are appropriate for preferred procurement and labeling. One of the commenters stated that without the LCA, USDA risks approving products that may have detrimental qualities that the Federal government would not want to support. The second commenter stated that LCA requirements are critical to assure that USDA does not continue to place products onto the BioPreferred catalogue that do not demonstrate better environmental or health benefits than their non-biobased competitors. The

[1] Or such other amount as the Secretary determines appropriate.

third commenter stated that LCA is necessary to provide transparency in the USDA's evaluation of biobased content and that the assessment provides assurance that products in the Biobased Market program demonstrate substantial environmental benefits compared to alternative products. The commenter noted that the USDA Forest Service supports the use of LCA as a tool to identify materials that reduce environmental burdens and urged OPPM to follow their lead by maintaining the LCA requirement as part of the Biobased Market program.

One commenter recommended that USDA reconsider the ''voluntary'' approach to the development of LCA data and information. According to the commenter, LCA information is critical to understanding the full range of environmental impacts from product content or material substitution. The commenter also stated that LCA data inform agencies of the unseen or unanticipated costs and benefits from making preference selections based solely on biobased or non-biobased content. The commenter stated that LCA data help better inform interagency review, and provide critical information needed by other agencies, particularly those agencies with regulatory authority over greenhouse gas emissions and other environmental impacts related to material substitution. The commenter also stated that LCA data provide benchmarked and updated data so agencies can more effectively perform regulatory look-back. According to the commenter, the President made clear in Executive Order 13563 (Jan. 21, 2011) that regulatory agencies ''must measure, and seek to improve, the actual results of regulatory requirements.'' The order emphasizes the importance of retrospective analysis of rules with a ''look back requirement,'' so the agency can, in effect, better engage in ongoing cost-benefit analysis of the regulation after it is promulgated. An LCA requirement is critical because it helps provide the data and information necessary to complete that review.

The commenter stated that, while some argue that requiring the submission of LCA data and information is unfair or imposes additional costs on biobased manufacturers, the FCEA and the Guidelines acknowledge that the beneficiaries of the biobased preference are generally expected to gain market share compared to those who do not. The commenter supported the application of an LCA requirement on an equal basis with respect to any Federal procurement program premised on the notion that certain material content preferences are preferred over others, and with respect to any supplier.

One commenter requested further clarity on LCA requirements for ''complex assembly'' biobased products. The commenter stated that it is not clear from the proposed rulemaking whether complex assemblies will require their own LCA, or whether LCAs for the individual components with biobased content will suffice, for example. The commenter recommended further guidelines for complex assemblies be published in the **Federal Register** for public comment. The commenter further stated that harmonization and alignment of product carbon footprint (PCF) standards need to be developed. The commenter stated that several standards (ISO 14067, GHG protocol, and PAS 2050) are being developed in parallel and that it is important that their approach and principles be consistent with one another and with generally accepted LCA guidance, such as ISO 14040/14044, and the International Reference Life Cycle Data System (ILCD) handbook. The commenter stated that discrepancies between PCF and LCA methods will cause confusion, waste resources and hinder the acceptance of PCF results.

One commenter stated that the inclusion of LCA considerations would provide additional information to the BioPreferred program, but that it also would add enormous complexity and cost to participating companies. The commenter stated that the type of LCA needed will vary depending upon whether the item being studied is an intermediate or a finished product as well as what end-of-life options are possible. Currently, ample industry forces are driving toward reduced environmental impact, and many manufacturers are voluntarily conducting LCAs to augment their marketing messaging. The commenter recommended that the USDA not codify LCA requirements into the BioPreferred program but, rather, incorporation of this information should be voluntary.

One commenter stated that the BioPreferred program should encourage the development of LCAs using ASTM/ISO methodology but not mandate or require it for procurement. The commenter stated that it is a useful tool to document continual environmental process improvements but that an LCA alone is not a sufficient tool to tell you if a product is on its way to being sustainable. The commenter explained that the fundamental value of biobased plastics arises from using biomass carbon feedstock in place of petro-fossil carbon feedstock.

One commenter stated that it is important that USDA consider the burden that providing life cycle information may place on suppliers of finished products. The commenter stated that it is reasonable that the suppliers of ingredients and feedstocks provide LCA information and data, while finished product suppliers might do so on a voluntary basis where it is reasonable to do so.

The commenter stated that information about costs over the full life cycle (including operating costs and environmental impacts) is an important consideration. The commenter stated that a UNEP/SETAC publication notes the role of such data in procurement decisions: ''[L]ife cycle costing as a technique to calculate and manage costs, especially for large investments has been used to support decision-makers in procurement for decades. . .''. The commenter stated that cost information is needed to verify that the qualifications for procurement awards have been met and may confirm whether the qualified biobased product is reasonably priced in comparison. The commenter further stated that the Guidelines should also encourage the preparation of the potential cost impacts of material substitution that could result from the procurement preference, including an analysis of commodity price trends.

Response: In the original Guidelines, manufacturers were required, under section 3201.8(a), to provide life cycle cost information from either a BEES analysis or a similar analysis using ASTM D7075 when such information was requested by a Federal agency. In the 2008 Farm Bill, Congress included language stating the Federal agencies could not, as a condition of purchase of a biobased product, require manufacturers or vendors of biobased products to provide to procuring agencies more data than would be required to be provided by other manufacturers or vendors offering products for sale. As a result of this language in the 2008 Farm Bill, USDA previously amended section 3201.8 (76 FR 6322) to eliminate this requirement. While Federal agencies may no longer require such information from manufacturers of biobased products, USDA believes that information from LCA developed using industry-accepted approaches, such as the ASTM D7075 standard or the BEES analytical tool, will be valuable in the marketing of biobased products. USDA also believes that the availability of LCA information may be valuable in Federal procurements that take into account human health, environmental, or

disposal considerations in the product selection process. Therefore, while USDA does not have the authority to require LCA data, USDA has, in today's final rule, added the proposed language to paragraph (a) encouraging stakeholders to develop and provide information on environmental and public health benefits, including life cycle costs, associated with their biobased products.

Comment: One commenter stated concern that the term ''relative price'' in section 3201.8 is an entirely new concept and that the term suggests that a government agency has the authority to use the data to adjust the market, negotiated, or contracted price of a product to a ''relative price.'' The commenter stated that the use of the term is inappropriate, problematic, and confusing and that USDA should retain the original wording of this section (''determining life cycle costs, environmental and health benefits, and performance'').

Response: USDA agrees with the commenter that the term ''relative price'' is not appropriate in this situation. USDA does believe, however, that providing some information on the price of products is useful to purchasers as they consider whether biobased products meet their purchasing criteria. USDA still encourages manufacturers to provide information to prospective buyers on the price of their products, either on the BioPreferred Web site or in their marketing material. In the final rule, USDA has dropped the word ''relative'' from the title of section 3201.8 and from the text within the section.

H. *7 CFR 3201.9—Funding for testing.*

No comments were received on the revisions proposed for this section.

VI. Regulatory Information

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

1. Need for the Rule

Today's final rule amends the BioPreferred Program Guidelines to establish the regulatory framework for the designation of complex assemblies and intermediate ingredients or feedstocks for Federal procurement preference. The designation of such products is specifically required under the Food, Conservation, and Energy Act of 2008, which states that:

> ''(B) Requirements.—The guidelines under this paragraph shall—
>
> (i) designate those items (including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to the preference described in paragraph (2);
>
> (ii) designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject to the preference described in paragraph (2);
>
> (iii) automatically designate items composed of intermediate ingredients and feedstocks designated under clause (ii), if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate).''

2. Benefits

We expect that this final rule will result in benefits that justify its cost, but we lack the information to quantify those benefits. This rule expands the scope of products that may be considered for Federal procurement preference. The eligibility of intermediate ingredients or feedstocks and complex assemblies is expected to increase demand for these products once designated, which, in turn, is expected to increase demand for those agricultural products that can serve as ingredients and feedstocks. This Federal procurement preference will thus benefit businesses producing these ingredients and feedstocks.

3. Costs

The anticipated costs of this action would stem from reduced demand for products that do not receive Federal Procurement Preference designation. Producers of ingredients and feedstocks that are not so designated could face a loss of market share within Federal procurement; however, this cost to some producers is a result of implementing the provisions of the statute.

Although today's final rule establishes procedures for designating qualified biobased product categories, no product categories are proposed to be designated today. The actual designation of biobased product categories under this program will be accomplished through future rulemaking actions and the effect of those rulemakings on the economy will be addressed at that time.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Although the BioPreferred program ultimately may have a direct impact on a substantial number of small entities, USDA has determined that today's final rule itself does not have a direct significant economic impact on a substantial number of small entities. This rule directly affects Federal agencies, which are required to consider designated products for purchase. In addition, private sector manufacturers and vendors of biobased products voluntarily may provide information to USDA through the means set forth in this rule. However, the rule imposes no requirement on manufacturers and vendors to do so, and does not differentiate between manufacturers and vendors based on size. USDA does not know how many small manufacturers and vendors may opt to participate at this stage of the program.

As explained above, when USDA issues a proposed rulemaking to designate product categories for preferred procurement under this program, USDA will assess the anticipated impact of such designations, including the impact on small entities. USDA anticipates that this program will positively impact small entities that manufacture or sell biobased products. For example, once product categories are designated, this program will provide additional opportunities for small businesses to manufacture and sell biobased products to Federal agencies. This program also will impact indirectly small entities that supply biobased materials to manufacturers. Additionally, this program may decrease opportunities for small businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. It is difficult for USDA to definitively assess these anticipated impacts on small entities until USDA proposes product categories for

designation. This rule does not designate any product categories.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions of this rule do not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this proposed regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under the Guidelines is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXXII as follows:

Chapter XXXII—Office of Procurement and Property Management

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Section 3201.1 is amended by revising paragraph (b) to read as follows:

§ 3201.1 Purpose and scope.

* * * * *

(b) *Scope.* The guidelines in this part establish a process for designating categories of products that are, or can be, produced with biobased components and materials and whose procurement by procuring agencies and other relevant stakeholders will carry out the objectives of section 9002 of FSRIA. The guidelines also establish a process for designating categories of intermediate ingredients and feedstocks that are, or can be, used to produce final products that will be designated and, thus, subject to Federal preferred procurement. The guidelines also establish a process for calculating the biobased content of complex assembly products, whose biobased content cannot be measured following ASTM Standard Method D6866, and for designating complex assembly product categories.

■ 3. Section 3201.2 is amended by:
■ a. Revising the definitions of ''BEES'' and ''Biobased product'';
■ b. Adding, in alphabetical order, definitions for ''Complex assembly'' and ''Designated intermediate ingredient or feedstock category'';
■ c. Removing the definition of ''Designated item'';
■ d. Adding, in alphabetical order, definitions for ''Designated product category'' and ''Intermediate ingredient or feedstock'';
■ e. Revising the definition of ''Procuring agency''; and
■ f. Adding, in alphabetical order, definitions for ''Qualified biobased product'' and ''Relevant stakeholder''.

The revisions and additions read as follows:

§ 3201.2 Definitions.

* * * * *

BEES. An acronym for ''Building for Environmental and Economic Sustainability,'' an analytic tool used to determine the environmental and health benefits and life cycle costs of products and materials, developed by the U.S. Department of Commerce National Institute of Standards and Technology.

* * * * *

Biobased product. A product determined by USDA to be a commercial or industrial product (other than food or feed) that is:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) An intermediate ingredient or feedstock.

* * * * *

Complex assembly. A system of distinct materials and components

assembled to create a finished product with specific functional intent where some or all of the system inputs contain some amount of biobased material or feedstock.

Designated intermediate ingredient or feedstock category. A generic grouping of biobased intermediate ingredients or feedstocks identified in subpart B of this part that, when comprising more than 50 percent (or another amount as specified in subpart B of this part) of a resultant final product, qualifies the resultant final product for the procurement preference established under section 9002 of FSRIA.

Designated product category. A generic grouping of biobased products, including those final products made from designated intermediate ingredients or feedstocks, or complex assemblies identified in subpart B of this part, that is eligible for the procurement preference established under section 9002 of FSRIA.

* * * * *

Intermediate ingredient or feedstock. A material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials that have undergone value added processing (including thermal, chemical, biological, or a significant amount of mechanical processing), excluding harvesting operations, offered for sale by a manufacturer or vendor and that is subsequently used to make a more complex compound or product.

* * * * *

Procuring agency. Any Federal agency that is using Federal funds for procurement or any person contracting with any Federal agency with respect to work performed under the contract.

* * * * *

Qualified biobased product. A product that is eligible for Federal preferred procurement because it meets the definition and minimum biobased content criteria for one or more designated product categories, or one or more designated intermediate ingredient or feedstock categories, as specified in subpart B of this part.

* * * * *

Relevant stakeholder. Individuals or officers of state or local government organizations, private non-profit institutions or organizations, and private businesses or consumers.

* * * * *

■ 4. Section 3201.3 is amended by revising paragraphs (c) and (d) to read as follows:

§ 3201.3 Applicability to Federal procurements.

* * * * *

(c) *Procuring products composed of the highest percentage of biobased content.* Section 9002(a)(2) of FSRIA requires procuring agencies to procure qualified biobased products composed of the highest percentage of biobased content practicable or such products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1). Procuring agencies may decide not to procure such qualified biobased products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

(d) This guideline does not apply to purchases of qualified biobased products that are unrelated to or incidental to Federal funding; i.e., not the direct result of a contract or agreement with persons supplying items to a procuring agency or providing support services that include the supply or use of products.

* * * * *

■ 5. Section 3201.4 is amended by revising paragraphs (b) and (c) to read as follows:

§ 3201.4 Procurement programs.

* * * * *

(b) *Federal agency preferred procurement programs.* (1) On or before July 31, 2015, each Federal agency shall develop a procurement program which will assure that qualified biobased products are purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

(i) A preference program for purchasing qualified biobased products,

(ii) A promotion program to promote the preference program; and

(iii) Provisions for the annual review and monitoring of the effectiveness of the procurement program.

(2) In developing the preference program, Federal agencies shall adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(i) A policy of awarding contracts on a case-by-case basis to the vendor offering a qualified biobased product composed of the highest percentage of biobased content practicable except when such products:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(ii) A policy of setting minimum biobased content specifications in such a way as to assure that the required biobased content of qualified biobased products is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part except when such products:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(3) In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from ''designated countries,'' as that term is defined in section 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program.

(c) *Procurement specifications.* After the publication date of each designated product category and each designated intermediate ingredient or feedstock category, Federal agencies that have the responsibility for drafting or reviewing specifications for products procured by Federal agencies shall ensure within a specified time frame that their specifications require the use of qualified biobased products, consistent with the guidelines in this part. USDA will specify the allowable time frame in each designation rule. The biobased content of qualified biobased products within a designated product category or a designated intermediate ingredient or feedstock category may vary considerably from product to product based on the mix of ingredients used in its manufacture. Likewise, the biobased content of qualified biobased products that qualify because they are made from materials within designated intermediate ingredient or feedstock categories may also vary significantly. In procuring qualified biobased products, the percentage of biobased content should be maximized, consistent with achieving the desired performance for the product.

■ 6. Section 3201.5 is revised to read as follows:

§ 3201.5 Category designation.

(a) *Procedure.* Designated product categories, designated intermediate ingredient or feedstock categories, and designated final product categories composed of qualifying intermediate ingredients or feedstocks are listed in subpart B of this part.

(1) In designating product categories, USDA will designate categories composed of generic groupings of specific products or complex assemblies and will identify the minimum biobased content for each listed category or subcategory. As product categories are designated for procurement preference, they will be added to subpart B of this part.

(2) In designating intermediate ingredient or feedstock categories, USDA will designate categories composed of generic groupings of specific intermediate ingredients or feedstocks, and will identify the minimum biobased content for each listed category or sub-category. As categories are designated for product qualification, they will be added to subpart B of this part. USDA encourages manufacturers and vendors of intermediate ingredients or feedstocks to provide USDA with information relevant to significant potential applications for intermediate ingredients or feedstocks, including estimates of typical formulation rates.

(3) During the process of designating intermediate ingredient or feedstock categories, USDA will also gather information on the various types of final products that are, or can be, made from those intermediate ingredients or feedstocks. Final products that fall within existing designated product categories will be subject to the minimum biobased content requirements for those product categories, as specified in subpart B of this part. New product categories that are identified during the information gathering process will be listed in the **Federal Register** proposed rule for designating the intermediate ingredient or feedstock categories. A minimum biobased content for each of the final product categories will also be identified based on the amount of designated intermediate ingredients or feedstocks such products contain. Public comment will be invited on the list of potential final product categories, and the minimum biobased content for each, as well as on the intermediate ingredient and feedstock categories being proposed for designation. Public comments on the list of potential final product categories will be considered, along with any additional information gathered by USDA, and the list will be finalized. When the final rule designating the intermediate ingredient or feedstock categories, by adding them to subpart B of this part, is published in the **Federal Register**, the list of final product categories will also be added to subpart B of this part. Once these final product categories are listed in subpart B of this part, they will become eligible for the Federal procurement preference.

(b) *Considerations.* (1) In designating product categories and intermediate ingredient or feedstock categories, USDA will consider the availability of qualified biobased products and the economic and technological feasibility of using such products, including price. USDA will gather information on individual qualified biobased products within a category and extrapolate that information to the category level for consideration in designating categories.

(2) [Reserved]

(c) *Exclusions.* Motor vehicle fuels, heating oil, and electricity are excluded by statute from this program.

■ 7. Section 3201.6 is amended by revising paragraph (a) to read as follows:

§ 3201.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 of FSRIA can be found at: *http://www.biopreferred.gov.* USDA will maintain a voluntary Web-based information site for manufacturers and vendors of qualified biobased products and Federal agencies to exchange information, as described in paragraphs (a)(1) and (2) of this section.

(1) *Product information.* The Web site will provide information as to the availability, price, biobased content, performance and environmental and public health benefits of the designated product categories and designated intermediate ingredient or feedstock categories. USDA encourages manufacturers and vendors to provide product and business contact information for designated categories. Instructions for posting information are found on the Web site itself. USDA also encourages Federal agencies to utilize this Web site to obtain current information on designated categories, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the Web site, manufacturers and vendors are expected to provide relevant information to Federal agencies, subject to the limitations specified in § 3201.8(a), with respect to product characteristics, including verification of such characteristics if requested.

(2) *National Testing Center Registry.* The Web site will include an electronic listing of recognized industry standard testing organizations that will serve biobased product manufacturers such as ASTM International, Society of Automotive Engineers, and the American Petroleum Institute. USDA encourages stakeholders to submit information on other possible testing resources to the BioPreferred program for inclusion.

* * * * *

■ 8. Section 3201.7 is revised to read as follows:

§ 3201.7 Determining biobased content.

(a) *Certification requirements.* For any qualified biobased product offered for preferred procurement, manufacturers and vendors must certify that the product meets the biobased content requirements for the designated product category or designated intermediate ingredient or feedstock category within which the qualified biobased product falls. Paragraph (c) of this section addresses how to determine biobased content. Upon request, manufacturers and vendors must provide USDA and Federal agencies information to verify biobased content for products certified to qualify for preferred procurement.

(b) *Minimum biobased content.* Unless specified otherwise in the designation of a particular product category or intermediate ingredient or feedstock category, the minimum biobased content requirements in a specific category designation refer to the organic carbon portion of the product, and not the entire product.

(c) *Determining biobased content.* Verification of biobased content must be based on third party ASTM/ISO compliant test facility testing using the ASTM Standard Method D6866, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.'' ASTM Standard Method D6866 determines biobased content based on the amount of biobased carbon in the material or product as percent of the weight (mass) of the total organic carbon in the material or product.

(1) *Biobased products, intermediate ingredients or feedstocks.* Biobased content will be based on the amount of biobased carbon in the product or material as a percent of the weight (mass) of the total organic carbon in the product or material.

(2) *Final products composed of designated intermediate ingredient or feedstock materials.* The biobased content of final products composed of designated intermediate ingredient or feedstock materials will be determined by calculating the percentage by weight (mass) that the biobased component of each designated intermediate ingredient or feedstock material represents of the total organic carbon content of the final

product and summing the results (if more than one designated intermediate ingredient or feedstock is used). If the final product also contains biobased content from intermediate ingredient or feedstock material that is not designated, the percentage by weight that these biobased ingredients represent of the total organic carbon content should be included in the calculation.

(3) *Complex assemblies.* The biobased content of a complex assembly product, where the product has ''n'' components whose biobased and organic carbon content can be experimentally determined, will be calculated using the following equation:

$$\text{Biobased Content of Product} = \sum_{i=1}^{n} M_i * BCC_i * OCC_i \; / \; \sum_{i=1}^{n} M_i * OCC_i$$

Where:

M_i = mass of the nth component

BCC_i = biobased carbon content of the nth component (%)

OCC_i = organic carbon content of the nth component (%)

(d) *Products and intermediate ingredients or feedstocks with the same formulation.* In the case of products and intermediate ingredients or feedstocks that are essentially the same formulation, but marketed under more than one brand name, biobased content test data need not be brand-name specific.

■ 9. Section 3201.8 is amended by revising the section heading and by revising paragraphs (a) and (b) to read as follows:

§ 3201.8 Determining price, environmental and health benefits, and performance.

(a) *Providing information on price and environmental and health benefits.* Federal agencies may not require manufacturers or vendors of qualified biobased products to provide to procuring agencies more data than would be required of other manufacturers or vendors offering products for sale to a procuring agency (aside from data confirming the biobased contents of the products) as a condition of the purchase of biobased products from the manufacturer or vendor. USDA will work with manufacturers and vendors to collect information needed to estimate the price of biobased products, complex assemblies, intermediate materials or feedstocks as part of the designation process, including application units, average unit cost, and application frequency. USDA encourages industry stakeholders to provide information on environmental and public health benefits based on industry accepted analytical approaches including, but not limited to: Material carbon footprint analysis, the ASTM D7075 standard for evaluating and reporting on environmental performance of biobased products, the International Standards Organization ISO 14040, the ASTM International life-cycle cost method (E917) and multi-attribute decision analysis (E1765), the British Standards Institution PAS 2050, and the National Institute of Standards and Technology BEES analytical tool. USDA will make such stakeholder-supplied information available on the BioPreferred Web site.

(b) *Performance test information.* In assessing performance of qualified biobased products, USDA requires that procuring agencies rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by a laboratory compliant with the requirements of the standards body. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

* * * * *

§ 3201.9 [Removed and Reserved]

■ 10. Remove and reserve § 3201.9.

Subpart B—Designated Product Categories and Intermediate Ingredients or Feedstocks

■ 11. Revise the heading to subpart B to read as set forth above.

Dated: July 21, 2014.

Gregory L. Parham,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2014–18031 Filed 7–31–14; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0899; Special Conditions No. 25–522–SC]

Special Conditions: Airbus Model A350–900 Airplane; Control-Surface Awareness and Mode Annunciation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Airbus Model A350–900 airplanes. These airplanes have a novel or unusual design feature associated with control-surface awareness and mode annunciation provided by the electronic flight-control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* September 2, 2014.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 airplane. Later, Airbus requested and the FAA approved, an extension to the application for FAA type certification to November 15, 2009. The Model A350–900 airplane has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB

engines. It features a twin-aisle, 9-abreast, economy-class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Airbus Model A350–900 airplane configuration accommodates 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a maximum take-off weight of 602,000 lbs.

These special conditions for control-surface awareness, applicable to Airbus Model A350–900 airplanes, require suitable flight-control-position annunciation and control-system mode of operation to be provided to the flightcrew when a flight condition exists in which nearly full surface authority (not crew-commanded) is being utilized. Suitability of such a display must take into account that some pilot-demanded maneuvers (e.g., rapid roll) are necessarily associated with intended full performance, which may saturate the surface. Therefore, simple alerting systems, which would function in both intended or unexpected control-limiting situations, must be properly balanced between needed crew awareness and nuisance features. A monitoring system that might compare airplane motion and surface deflection, and pilot side-stick controller (SSC) demand, could be useful for elimination of nuisance alerting.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A350–900 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Airbus Model A350–900 airplane incorporates the following novel or unusual design features: Electronic flight-control system providing control-surface awareness and mode annunciation to the flightcrew.

Discussion

With a response-command type flight-control system and no direct coupling from cockpit controller to control surface, the pilot is not aware of actual surface position utilized to fulfill the requested demand. Some unusual flight conditions, arising from atmospheric conditions and/or airplane or engine failures, may result in full or nearly full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control-surface limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in such a manner as to cause loss of control or other unsafe stability or performance characteristics.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions No. 25–13–15–SC for Airbus Model A350–900 airplanes was published in the **Federal Register** on December 17, 2013 (78 FR 76254). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions apply to Airbus Model A350–900 airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A350–900 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A350–900 airplanes.

Current airworthiness standards do not contain adequate safety standards for the design. In addition to the requirements of §§ 25.143, 25.671 and 25.672, the following special conditions apply:

1. The system design must ensure that the flightcrew is made suitably aware whenever the primary control means nears the limit of control authority.

Note: The term ''suitably aware'' indicates annunciations provided to the flight crew that are appropriately balanced between nuisance and necessary crew awareness.

2. If the design of the flight-control system has multiple modes of operation, a means must be provided to indicate to the crew any mode that significantly changes or degrades the normal handling or operational characteristics of the airplane.

Issued in Renton, Washington, on July 11, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18175 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0902; Special Conditions No. 25–521–SC]

Special Conditions: Airbus Model A350–900 Series Airplane; Electronic Flight-Control System (EFCS) To Limit Pitch and Roll

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A350–900 airplane. This airplane will have a novel or unusual design feature associated with the electronic flight-control system (EFCS) that limits pitch- and roll-attitude functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards

for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* September 2, 2014.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 airplane. Later, Airbus requested, and the FAA approved, an extension to the application for FAA type certification to November 15, 2009. The Model A350–900 airplane has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB engines. It features a twin-aisle, 9-abreast, economy-class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 airplane configuration will accommodate 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a maximum take-off weight of 602,000 lbs.

A special condition to supplement § 25.143 concerning pitch and roll limits was developed for the Airbus Model A320, A330, A340, and A380 airplanes wherein performance of the limiting functions was monitored throughout the flight-test program. The FAA expects similar monitoring to take place during the A350 flight-test program to substantiate the pitch- and roll-attitude limiting functions, and the appropriateness of the chosen limits.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and final special conditions, the Model A350–900 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Airbus Model A350–900 series will incorporate the following novel or unusual design features: an EFCS that, when operating in its normal mode, will prevent airplane pitch attitudes greater than +30 degrees and less than −15 degrees, and roll angles greater than plus or minus 67 degrees. In addition, positive spiral stability is introduced for roll angles greater than 33 degrees at speeds below V_{MO}/M_{MO}. At speeds greater than V_{MO} and up to V_{DF}, maximum aileron-control force is limited to only 45 degrees maximum bank angle.

Discussion

It is expected that high thrust-to-weight ratios provide the most critical cases for the positive-pitch limit. A margin in pitch control must be available to enable speed control in maneuvers such as climb after takeoff, and balked landing climb. The pitch limit must not impede likely maneuvering made necessary by collision avoidance efforts. A negative-pitch limit must similarly not interfere with collision-avoidance capability, or with attaining and maintaining speeds near V_{MO}/M_{MO} for emergency descent.

Spiral stability, which is introduced above 33 degrees roll angle, and the roll limit must not restrict attaining roll angles up to 66 degrees (approximately 2.5g level turn) with flaps up and 60 degrees (approximately 2.0g level turn) with flaps down. The implementation of this spiral stability requires a steady aileron-control force to maintain a constant bank angle above 33 degrees. This force must not require excessive pilot strength as stated in § 25.143(f).

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions no. 25–13–25–SC for the Airbus Model A350–900 airplane was published in the **Federal Register** on November 12, 2013 (78 FR 67320). One comment supporting the special conditions was received. These special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions apply to Airbus Model A350–900 airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A350–900 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A350–900 airplanes. In addition to § 25.143, the following requirements apply:

1. The pitch-limiting function must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engines-operating takeoff, plus a suitable margin to allow for satisfactory speed control.

2. The pitch and roll limiting functions must not restrict or prevent attaining pitch attitudes necessary for emergency maneuvering, or roll angles up to 66 degrees with flaps up or 60 degrees with flaps down. Spiral stability, which is introduced above 33 degrees roll angle, must not require excessive pilot strength to achieve these roll-limit angles. Other protections, which further limit the roll capability under certain extreme angle-of-attack,

attitude, or high-speed conditions, are acceptable as long as they allow at least 45 degrees of roll capability.

Issued in Renton, Washington, on July 11, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18176 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0486; Directorate Identifier 2014–NM–126–AD; Amendment 39–17918; AD 2014–15–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A319–111, –112, –115, –132, and –133 airplanes; Model A320–214, –232, and –233 airplanes; and Model A321–211, –231, and –232 airplanes. This AD requires a detailed inspection for missing fasteners on the frame between certain stringers; for certain airplanes, a rototest inspection of the fastener holes for cracking; and corrective actions if necessary. This AD was prompted by a report that when the cabin lining was removed during a cabin conversion it was discovered that fasteners were missing on the frame. We are issuing this AD to detect and correct missing fasteners which, if not corrected, could affect the structural integrity of the airframe and could result in rapid decompression.

DATES: This AD becomes effective August 18, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 18, 2014.

We must receive comments on this AD by September 15, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0486; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0146, dated June 11, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A319–111, –112, –115, –132, and –133 airplanes; Model A320–214, –232, and –233 airplanes; and Model A321–211, –231, and –232 airplanes. The MCAI states:

During cabin conversion of an A320 aeroplane, after removal of the cabin lining, an area was discovered where fasteners were missing at frame (FR) 24 between stringer (STR) 17 and STR18. Investigation results revealed that the available data concerning installation on the final assembly line was insufficient to pinpoint the exact MSN [manufacturer serial number] on which the affected assemblies were installed. However, a 'group' of MSN suspected to be affected was identified. Results of the static analysis performed show that the structure is still able to sustain Limit and Ultimate loads. However, the fatigue aspects indicate that long-term effects can be expected.

This condition, if not corrected, could affect the structural integrity of the airframe.

Prompted by these findings, Airbus issued Alert Operators Transmission (AOT) A53N006–14 and Service Bulletin (SB) A320–53–1285 to provide inspection instructions.

For the reasons described above, this [EASA] AD requires a one-time detailed inspection (DET) [for missing fasteners] of the aeroplane structure at FR24 and, depending on findings, [a rototest inspection of the fastener holes for cracking and] accomplishment of applicable corrective actions.

Corrective actions include repairing cracking and installing fasteners.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0486.

Relevant Service Information

Airbus has issued the following service information. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Alert Operators Transmission A53N006–14, dated May 13, 2014.
- Service Bulletin A320–53–1285, dated January 29, 2014.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the

FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because missing fasteners on the frame may affect the structural integrity of the circumferential joint, which might result in rapid decompression. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–20**–*****; Directorate Identifier 2014–NM–126–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 7 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $595, or $85 per product.

In addition, we estimate that any necessary follow-on actions will take about 39 work-hours and require parts costing $0, for a cost of $3,315 per product. We have no way of determining the number of aircraft that might need these actions.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair specified in this AD.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information

required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2014–15–16 Airbus: Amendment 39–17918. Docket No. FAA–2014–0486; Directorate Identifier 2014–NM–126–AD.

(a) Effective Date

This AD becomes effective August 18, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, manufacturer serial numbers (MSN) 5230 through 5300 inclusive, except MSN 5255 and 5295.

(1) Model A319–111, –112, –115, –132, and –133 airplanes.

(2) Model A320–214, –232, and –233 airplanes.

(3) Model A321–211, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that when the cabin lining was removed during a cabin conversion it was discovered that fasteners were missing on the frame. We are issuing this AD to detect and correct missing fasteners which, if not corrected, could affect the structural integrity of the airframe and could result in rapid decompression.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Detailed Inspection

Within 60 flight cycles after the effective date of this AD: Do a detailed inspection to determine if any fasteners are missing on the structure at frame (FR) 24 between stringer (STR) 17 and STR 18 on the right side only, in accordance with the instructions in Airbus Alert Operators Transmission A53N006–14, dated May 13, 2014.

(h) Rototest Inspection and Corrective Actions

If, during the detailed inspection required by paragraph (g) of this AD, any fastener is found missing: Before the accumulation of 3,300 flight cycles since the airplane's first flight, or within 60 flight cycles after the effective date of this AD, whichever occurs later, do a rototest inspection of the fastener holes for cracking and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1285, dated January 29, 2014, except as required by paragraph (i) of this AD. Do all applicable corrective actions before further flight.

(i) Repair

If any crack is found during any inspection required by paragraph (h) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Reporting Requirement

At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, report both positive and negative results of the inspections required by paragraphs (g) and (h) of this AD, as applicable, to Airbus, Customer Services Engineering, Emeric Mevel, Structure Engineer, Structure Engineering Support—SEES1, Customer Services; telephone +33(0)5 67–19 02 41; fax +33(0) 5 61 93 36 14; email *emeric.mevel@airbus.com*. The report must include the information specified in Figure A–FRAAA of Airbus Service Bulletin A320–53–1285, dated January 29, 2014.

(1) If the inspection was done on or after the effective date of this AD: Within 30 days after that inspection.

(2) If the inspection was done before the effective date of this AD: Within 30 days after the effective date of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding

district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0146, dated June 11, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0486.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Alert Operators Transmission A53N006–14, dated May 13, 2014.

(ii) Airbus Service Bulletin A320–53–1285, dated January 29, 2014.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 12, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17782 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0228; Directorate Identifier 2013–NM–216–AD; Amendment 39–17911; AD 2014–15–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200 Freighter, A330–200 and –300, and A340–200, –300, –500, and –600 series airplanes. This AD was prompted by reassessment of an unsafe condition related to MZ-type spoiler servo-controls (SSCs) that did not remain locked in the retracted position (hydraulic locking function) after manual depressurization of the corresponding hydraulic circuit. This reassessment resulted in the determination that performing repetitive operational tests of all SSC types is necessary. This AD requires repetitive operational tests of the hydraulic locking function on each SSC installed on the blue or yellow hydraulic circuits, and replacing any affected SSC with a serviceable SSC. We are issuing this AD to detect and correct loss of the hydraulic locking function during take-off, which, in combination with one inoperative engine, could result in reduced controllability of the airplane.

DATES: This AD becomes effective September 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 5, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0228* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A330–200 Freighter, A330–200 and –300, and A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on April 14, 2014 (79 FR 20839).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0251 dated October 15, 2013; Correction dated October 16, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''); to correct an unsafe condition for the specified products. The MCAI states:

> During post-flight maintenance checks accomplished on an A330 and on an A340 airplane, it was identified that seven spoiler servo-controls MZ series had lost their hydraulic locking function. The results of the subsequent technical investigation accomplished in-shop by the part supplier confirmed the system failure was due to a sheared seal on the blocking valve, ensuring the blocking function of the spoiler. It is suspected that the seal damage may have occurred during accomplishment of a modification to fit a new design of maintenance cover on wing, required by EASA AD 2008–0160 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0160.pdf/AD_2008–0160*], [which corresponds to FAA AD 2009–18–20, Amendment 39–16017 (74 FR 46313, September 9, 2009)].

This condition, if not detected and corrected, in combination with one engine inoperative at take-off, could result in reduced control of the aeroplane.

Prompted by these findings, Airbus issued All Operators Telex (AOT) A330–27A3185 and AOT A340–27A4181 to request a one-time operational test of the Hydraulic Locking Function for aeroplanes on which MZ type Spoiler Servo Control (SSC) Part Number (P/N) MZ4339390–12 or P/N MZ4306000–12 are fitted, and EASA issued AD 2012–0009 [*http://ad.easa.europa.eu/blob/easa_ad_2012_0009.pdf/AD_2012–0009,* which corresponds to FAA AD 2012–25–10, Amendment 39–17291 (77 FR 76228, December 27, 2012)] to require accomplishment of this test.

Since that [EASA] AD was issued, Airbus re-assessed the situation and determined that it is necessary to introduce repetitive inspections [operational tests] of the SSC, irrespective of SSC type. Airbus issued three SBs for those repetitive inspections [operational tests] on all A330, A340, and A340–500/600 aeroplanes.

For the reason described above, this [EASA] AD requires repetitive operational tests of the hydraulic locking function of the SSC installed on the Blue and Yellow hydraulic circuits, irrespective of the SSC type, and, depending on test results, replacement of the SSC.

This [EASA] AD has been republished to correct the date of publication.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA–2014–0228–0002.*

Revised Service Information

Since the NPRM (79 FR 20839, April 14, 2014) was published, we have received the following revised service information:

- Airbus Service Bulletin A330–27–3195, Revision 01, dated February 6, 2014.
- Airbus Service Bulletin A340–27–4188, Revision 01, dated February 6, 2014.
- Airbus Service Bulletin A340–27–5059, Revision 01, dated February 6, 2014.

We have determined that this service information does not add any additional actions to those proposed in the NPRM (79 FR 20839, April 14, 2014); therefore, we have revised paragraph (g) of this AD to refer to that service information. We have also added a new paragraph (h) to this AD (and redesignated subsequent paragraphs accordingly) to provide credit for actions performed before the effective date of this AD using the following service information:

- Airbus Service Bulletin A330–27–3195, dated December 7, 2012.
- Airbus Service Bulletin A340–27–4188, dated December 7, 2012.
- Airbus Service Bulletin A340–27–5059, dated April 10, 2013.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 20839, April 14, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 20839, April 14, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 20839, April 14, 2014) about these proposed changes. However, a comment was provided for an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 20839, April 14, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 20839, April 14, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 77 airplanes of U.S. registry.

We also estimate that it takes about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $39,270, or $510 per product.

We estimate that it takes about 3 work-hours per product to do any necessary SSC replacement that would be required based on the results of the operational test. Required parts cost about $35,000 per SSC. We have no way of determining the number of aircraft that might need these replacements.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0597;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2014–15–09 Airbus: Amendment 39–17911. Docket No. FAA–2014–0228; Directorate Identifier 2013–NM–216–AD.

(a) Effective Date

This AD becomes effective September 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; Model A340–211, –212, –213, –311, –312, and –313 airplanes; and Model A340–541 and –642 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by reassessment of an unsafe condition related to MZ-type spoiler servo-controls (SSCs) that did not remain locked in the retracted position (hydraulic locking function) after manual depressurization of the corresponding hydraulic circuit. This reassessment resulted in the determination that performing repetitive operational tests of all SSC types is necessary. We are issuing this AD to detect and correct loss of the hydraulic locking function during take-off, which, in combination with one inoperative engine, could result in reduced controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Repetitive Operational Tests

(1) At the time specified in paragraph (g)(2) of this AD: Accomplish an operational test of the hydraulic locking function on each SSC (any type), when fitted on the Blue or Yellow hydraulic circuits, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD. Repeat the operational test thereafter at intervals not to exceed 48 months.

(i) Airbus Service Bulletin A330–27–3195, Revision 01, dated February 6, 2014 (for Model A330–200 Freighter, A330–200 and –300 series airplanes).

(ii) Airbus Service Bulletin A340–27–4188, Revision 01, dated February 6, 2014 (for Model A340–200, and –300 series airplanes).

(iii) Airbus Service Bulletin A340–27–5059, Revision 01, dated February 6, 2014 (for Model A340–500 and –600 series airplanes).

(2) At the latest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD, do the operational test specified in paragraph (g)(1) of this AD.

(i) Within 48 months since first flight of the airplane.

(ii) Within 48 months since accomplishing the most recent operational test, as specified in the applicable Airbus All Operators Telex (AOT) A330–27A3185; or AOT A340–27A4181; both dated January 4, 2012. These AOTs were incorporated by reference in AD 2012–25–10, Amendment 39–17291 (77 FR 76228, December 27, 2012).

(iii) Within 24 months after the effective date of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, which is not incorporated by reference in this AD.

(i) Airbus Service Bulletin A330–27–3195, dated December 7, 2012.

(ii) Airbus Service Bulletin A340–27–4188, dated December 7, 2012.

(iii) Airbus Service Bulletin A340–27–5059, dated April 10, 2013.

(i) Replacement of Affected SSCs

If, during any operational test required by paragraph (g)(1) of this AD, the hydraulic locking function of an SSC fails the test, before further flight, replace the affected SSC with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD.

(j) No Terminating Action

Doing the replacement required by paragraph (i) of this AD is not terminating action for the repetitive operational tests required by paragraph (g)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0251 dated October 15, 2013; Correction dated October 16, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0228-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A330–27–3195, Revision 01, dated February 6, 2014.

(ii) Airbus Service Bulletin A340–27–4188, Revision 01, dated February 6, 2014.

(iii) Airbus Service Bulletin A340–27–5059, Revision 01, dated February 6, 2014.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 17, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17468 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0196; Directorate Identifier 2014–NM–015–AD; Amendment 39–17913; AD 2014–15–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by two in-service reports of fracture of the rudder pedal tubes installed on the pilot-side rudder bar assembly. This AD requires repetitive inspections for cracking and damage of the pilot-side rudder pedal tubes, and corrective action if necessary. This AD also provides optional terminating action for the repetitive inspections. We are issuing this AD to detect and correct cracked and damaged pilot-side rudder pedal tubes, which could result in loss of function of the pilot's rudder pedal during flight, takeoff, or landing, and could result in reduced controllability of the airplane.

DATES: This AD becomes effective September 5, 2014.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of September 5, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA–2014–0196* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, Model CL–600–2D24 (Regional Jet Series 900) airplanes, and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on April 14, 2014 (79 FR 20829).

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF–2014–02, dated January 8, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''). The MCAI states:

> There have been two in-service reports of fracture of the rudder pedal tubes installed on the pilot-side rudder bar assembly on CL–600–2B19 model aeroplanes.
>
> Laboratory examination of the fractured rudder pedal tubes found that in both cases, the fatigue cracks initiated at the aft taper pin holes where the connecting rod fitting is attached. Fatigue testing of the rudder pedal tubes confirmed that the fatigue cracking is due to loads induced during parking brake application. Therefore, only the rudder pedal tubes on the pilot's side are vulnerable to fatigue cracking as the parking brake is primarily applied by the pilot.
>
> Loss of pilot rudder pedal input during flight would result in reduced yaw controllability of the aeroplane. Loss of pilot rudder pedal input during takeoff or landing may lead to a runway excursion.
>
> Although there have been no reported failures to date on any CL–600–2C10, –2D15, –2D24, and –2D25 model aeroplanes, the same torque tubes part number (P/N) 600–90204–3 are installed, which may be prone to premature fatigue cracking.
>
> This [Canadian] AD mandates initial and repetitive [detailed and eddy current] inspections [for cracking and damage] of the pilot-side rudder pedal tubes, P/N 600–90204–3, until the terminating action [replacement of both pilot-side rudder bar assemblies] is accomplished [and corrective actions if necessary].

Corrective actions include replacement of the rudder bar assembly and repair. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0196-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 20829, April 14, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 20829, April 14, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 20829, April 14, 2014) about these proposed changes. However, a comment was provided for a similar NPRM, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized signature approval are

not TCCA-approved, unless TCCA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM discussed previously, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 20829, April 14, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 20829, April 14, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 400 airplanes of U.S. registry.

We also estimate that it takes about 3 work-hours per product to comply with the basic inspection requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $102,000, or $255 per airplane, per inspection cycle.

In addition, we estimate that any necessary replacement of the rudder pedal tubes takes about 6 work-hours and require parts costing $2,850, for a cost of $3,360 per product. We have no way of determining the number of aircraft that might need this action.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repairs specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0196;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2014–15–11 Bombardier, Inc.: Amendment 39–17913. Docket No. FAA–2014–0196; Directorate Identifier 2014–NM–015–AD.

(a) Effective Date

This AD becomes effective September 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10342 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15337 inclusive.

(3) Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19040 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by two in-service reports of fracture of the rudder pedal tubes installed on the pilot-side rudder bar assembly. We are issuing this AD to detect and correct cracked and damaged pilot-side rudder pedal tubes, which could result in loss of function of the pilot's rudder pedal during flight, takeoff, or landing, and could result in reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

Before the accumulation of 26,000 total flight cycles or within 3 months after the effective date of this AD, whichever occurs later: Perform a detailed or eddy current inspection for cracking around the aft tapered holes of both pilot-side rudder pedal tubes, and for damage of the rudder pedal tubes in locations other than around the aft tapered holes, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–065, including Appendix A, dated November 15, 2013. Repeat the inspection thereafter at the applicable intervals specified in paragraph (g)(1) or (g)(2) of this AD, until the terminating action specified in paragraph (i) of this AD is done.

(1) If the most recent inspection was a detailed inspection: Within 750 flight cycles after doing the detailed inspection.

(2) If the most recent inspection was an eddy current inspection: Within 1,250 flight cycles after doing the eddy current inspection.

(h) Corrective Actions

(1) If any crack is found around the aft tapered holes during any inspection required by paragraph (g) of this AD, before further flight, replace the rudder bar assembly, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–065, including Appendix A, dated November 15, 2013.

(2) If any damage is found during any inspection required by paragraph (g) of this AD in a location other than around the aft tapered holes: Before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Optional Terminating Action

Replacement of both pilot-side rudder bar assemblies, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–065, including Appendix A, dated November 15, 2013, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–02, dated January 8, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0196-0002*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–27–065, including Appendix A, dated November 15, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on July 17, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17467 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0254; Directorate Identifier 2013–NM–047–AD; Amendment 39–17910; AD 2014–15–08]

RIN 2120–AA64

Airworthiness Directives; Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) Model Hawker 800XP, 850XP, and 900XP airplanes. This AD was prompted by a design review that revealed there were no instructions to apply sealant to structural components in the fuel tank during the winglet installation process. This AD requires an inspection for the presence of sealant on doubler plate edges, doubler plate rivets, and adjacent skin in the fuel vent surge tanks; and corrective actions if necessary. We are issuing this AD to detect and correct missing sealant, which, during a lightning strike, could result in a potential source of ignition in a fuel tank and consequent explosion or

fire and subsequent in-flight breakup of the airplane.

DATES: This AD is effective September 5, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 5, 2014.

ADDRESSES: For service information identified in this AD, contact Beechcraft Corporation, TMDC, P.O. Box 85, Wichita, KS 67201–0085; telephone 316–676–8238; fax 316–671–2540; email *tmdc@beechcraft.com;* Internet *http://pubs.beechcraft.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0254; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey Englert, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: 316–946–4167; fax: 316–946–4107; email: *jeffrey.englert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) Model Hawker 800XP, 850XP, and 900XP airplanes. The NPRM published in the **Federal Register** on April 24, 2014 (79 FR 22783). The NPRM was prompted by a design review that revealed there were no instructions to apply sealant to structural components in the fuel tank during the winglet installation process. The sealant is part of the lightning protection design for the fuel tanks. The NPRM proposed to require an inspection for the presence of sealant on doubler plate edges, doubler plate rivets, and adjacent skin in the fuel vent surge tanks; and corrective actions if necessary. We are issuing this AD to detect and correct missing sealant, which, during a lightning strike, could result in a potential source of ignition in a fuel tank and consequent explosion or fire and subsequent in-flight breakup of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 22783, April 24, 2014) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 22783, April 24, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 22783, April 24, 2014).

Costs of Compliance

We estimate that this AD affects 50 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170.	None	$170	$8,500

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Sealant application	36 work-hours × $85 per hour = $3,060	$32	$3,092

According to the manufacturer, all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2014–15–08 Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company): Amendment 39–17910; Docket No. FAA–2014–0254; Directorate Identifier 2013–NM–047–AD.

(a) Effective Date

This AD is effective September 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Beechcraft Corporation (Type Certificate previously held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) Model Hawker 800XP, 850XP, and 900XP airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by a design review that revealed there were no instructions to apply sealant to structural components in the fuel tank during the winglet installation process. We are issuing this AD to detect and correct missing sealant, which, during a lightning strike, could result in a potential source of ignition in a fuel tank and consequent explosion or fire and subsequent in-flight breakup of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Action

For airplanes identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Within 600 flight hours or 12 months after the effective date of this AD, whichever occurs first, do a general visual inspection for the presence of sealant on doubler plate edges, doubler plate rivets, and adjacent skin in the top and bottom of the left and right fuel vent surge tanks, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Hawker Beechcraft Service Bulletin SB 57–4112, dated February 2013, except as required by paragraph (i) of this AD. Do all applicable corrective actions before further flight.

(1) Any Beechcraft Corporation (Type Certificate previously held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) Model Hawker 800XP airplane, serial numbers 258324, 258326 through 258332 inclusive, 258334 through 258340 inclusive, 258342 through 258347 inclusive, 258349 through 258359 inclusive, 258361 through 258369 inclusive, 258371 through 258380 inclusive, 258382 through 258406 inclusive, 258408 through 258426 inclusive, 258428 through 258444 inclusive, 258446 through 258468 inclusive, 258470 through 258492 inclusive, 258494 through 258512 inclusive, 258514 through 258532 inclusive, 258534 through 258540 inclusive, 258542 through 258555 inclusive, 258557 through 258566 inclusive, 258278, 258541, 258556, 258567 through 258609 inclusive, 258611 through 258628 inclusive, 258630 through 258684 inclusive, 258686 through 258734 inclusive, 258736 through 258788 inclusive, 258795, 258802, 258821, 258825, 258829, 258834, 258840, and 258847; equipped with a kit numbered 140–1701–1, 140–1702–1, 140–1703–1,140–1703–5, 140–1703–7, or 140–1704–1 that was purchased from Hawker Beechcraft on or before February 13, 2013.

(2) Any Beechcraft Corporation (Type Certificate previously held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) Model Hawker 850XP airplane having serial numbers 258789 through 258794 inclusive, 258796, 258798 through 258801 inclusive, 258803 through 258819 inclusive, 258822, 258823, 258826 through 258828 inclusive, 258830 through 258833 inclusive, 258835 through 258838 inclusive, 258841, 258844, 258845, 258848, 258852, 258855, 258856, 258858, 258859, 258861, 258872, 258874, 258876, 258891, 258893, 258895, 258900, 258901, 258904, 258907, 258909, 258912, 258915, 258921, 258959, 258961, 258963, 258977, 258980, 258982, and subsequent serial numbers; equipped with a kit numbered 140–1701–1, 140–1702–1, 140–1703–1, 140–1703–5, 140–1703–7, or 140–1704–1 that was purchased on or before February 13, 2013.

(3) Beechcraft Corporation (Type Certificate previously held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) Model Hawker 900XP airplanes having serial numbers HA–0156 and HA–0159.

(h) Definition

For the purposes of this AD, a general visual inspection is a visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.

(i) Exception to the Service Information

A note in the Accomplishment Instructions of the Hawker Beechcraft Service Bulletin SB 57–4112, dated February 2013, instructs operators to contact Hawker Beechcraft if any difficulty is encountered in accomplishing the service information. However, this AD requires that any deviation from the instructions provided in Hawker Beechcraft Service Bulletin SB 57–4112, dated February 2013, must be approved as an alternative method of compliance (AMOC) under the provisions of paragraph (k) of this AD.

(j) Parts Installation Limitation

For all airplanes: As of the effective date of this AD, no kit having kit number 140–1701–1, 140–1702–1, 140–1703–1, 140–1703–5, 140–1703–7, or 140–1704–1, that was purchased before February 13, 2013, may be installed on any airplane unless the installation includes sealant on doubler plate edges, doubler plate rivets, and adjacent skin in the top and bottom of the left and right fuel vent surge tanks, as specified in the Accomplishment Instructions of Hawker Beechcraft Service Bulletin SB 57–4112, dated February 2013.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

For more information about this AD, contact Jeffrey Englert, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: 316–946–4167; fax: 316–946–4107; email: *jeffrey.englert@faa.gov.*

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Hawker Beechcraft Service Bulletin SB 57–4112, dated February 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Beechcraft Corporation, TMDC, P.O. Box 85, Wichita, KS 67201–0085; telephone 316–676–8238; fax 316–671–2540; email *tmdc@beechcraft.com;* Internet *http://pubs.beechcraft.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 15, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17325 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0145; Directorate Identifier 2011–NM–066–AD; Amendment 39–17899; AD 2014–14–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2003–18–10 for certain The Boeing Company Model 767 airplanes. AD 2003–18–10 required revising the Airworthiness Limitations Section of the maintenance planning data (MPD) document. This new AD also requires revising the maintenance program to incorporate an additional limitation, which terminates the existing requirements; and adds airplanes to the applicability. This AD was prompted by a re-evaluation of certain doors and flaps based on their fatigue-critical nature. We are issuing this AD to detect and correct fatigue cracking of the principal structural elements (PSEs), which could adversely affect the structural integrity of the airplane.

DATES: This AD is effective September 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of October 16, 2003 (68 FR 53503, September 11, 2003).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0145; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003). AD 2003–18–10 applied to The Boeing Company Model 767 airplanes. The NPRM published in the **Federal Register** on February 22, 2012 (77 FR 10403). That NPRM proposed to continue to require revising the Airworthiness Limitations Section of the MPD document. That NPRM also proposed to require revising the maintenance program to incorporate an additional limitation, which terminates the existing requirements; and adding airplanes to the applicability.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 10403, February 22, 2012) and the FAA's response to each comment.

Request To Reduce the Scope of the NPRM (77 FR 10403, February 22, 2012)

ABX Air requested that we reduce the scope of the NPRM (77 FR 10403, February 22, 2012).

ABX Air stated that the ''SUMMARY'' and ''Actions Since Existing AD was Issued'' sections of the NPRM imply that it is a result of an unsafe condition relating to certain cargo doors and flaps. ABX Air stated that the NPRM would require incorporation of the July 2011 revision of Section 9 of the Boeing 767 MPD Document into the operator's maintenance program. ABX Air stated that requiring the complete revision is overreaching the AD's scope.

We disagree with reducing the scope of this final rule. The NPRM (77 FR 10403, February 22, 2012) stated that re-evaluation of certain doors and flaps prompted the new rulemaking. However, the re-evaluation was not limited to certain doors and flaps, but rather a complete review of the entire July 2011 revision of Subsection B, Airworthiness Limitations—Structural Limitations, of Section 9 of the Boeing 767 MPD Document. The AD is intended to detect and correct fatigue cracking of the principal structural elements (PSEs) listed in the July 2011 revision of Subsection B, Airworthiness Limitations—Structural Limitations, of Section 9 of the Boeing 767 MPD

Document, as stated in the preamble of the NPRM. We have not changed this final rule in this regard.

Request To Revise Note 1 to Paragraph (c) of the NPRM (77 FR 10403, February 22, 2012)

Boeing requested that we revise the reference in Note 1 to paragraph (c) of the NPRM (77 FR 10403, February 22, 2012) from FAA Advisory Circular (AC) 25.1529–1A (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/E4111B5537E0B345862573B0006FA23B?OpenDocument&Highlight=ac 25.1529 1a*) to FAA AC 120–93, dated November 20, 2007 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/F73FD2A31B353A71862573B000521928?OpenDocument&Highlight=faa ac 120-93*). Boeing stated that the FAA has revised AC 25.1529–1 at Revision A, dated November 20, 2007 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/E4111B5537E0B345862573B0006FA23B?OpenDocument&Highlight=ac 25.1529 1a)*, to apply only to airplanes below 7,500 pounds gross weight; therefore, AC 25.1529–1A no longer applies to Model 767 airplanes.

We agree that FAA AC 25.1529–1A (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/E4111B5537E0B345862573B0006FA23B?OpenDocument&Highlight=ac 25.1529 1a*) does not apply to airplanes identified in this final rule, and have determined that Note 1 to paragraph (c) of the NPRM (77 FR 10403, February 22, 2012) is not needed. That note has been removed from this final rule.

Request To Remove Reference to Certain Document

United Parcel Service (UPS) requested that we remove the reference to Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 MPD Document from paragraph (g) of the NPRM (77 FR 10403, February 22, 2012). UPS stated that, if paragraph (g) of the NPRM is a restatement of the requirements of AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003), then the July 2011 revision is not required. UPS stated that, if the intent was to indicate those revisions previously approved by rule or Alternative Method of Compliance (AMOC) approval, then paragraph (g) of the NPRM should state that those revisions were previously approved instead of referring to specific revision dates.

We disagree with the request to remove the reference. Including this reference in paragraph (g) of this final rule gives an option to the operator, and is not a requirement. No change has been made to this final rule in this regard.

Requests To Permit Use of Later Revisions of MPD

Boeing and AA requested that we permit the use of later revisions of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, of the Boeing 767 MPD Document. Boeing stated that since the NPRM (77 FR 10403, February 22, 2012) was published, new revisions of that document have been released.

We agree to allow use of the most recent revision of the MPD (Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision February 2014, of the Boeing 767 MPD Document), and have added this reference in paragraph (i) of this final rule accordingly. Operators may also request approval to use prior revisions of the referenced MPD as an alternative method of compliance, under the provisions of paragraph (l) of the final rule.

Requests To Provide Grace Period

ABX Air, Japan Air Lines (JAL), and All Nippon Airways (ANA) requested that we add a grace period to paragraph (i) of the NPRM (77 FR 10403, February 22, 2012).

ABX Air requested a 44-month grace period to allow operators to revise their maintenance program and do the initial inspection and repair without putting the fleet out of compliance. ABX Air stated that airplanes that have exceeded the existing 25,000-flight-cycle compliance time would be out of compliance when the AD is published. ABX believes that extending the compliance time to 44 months will provide an acceptable level of safety.

JAL requested we add a 24-month grace period to paragraph (i) of the NPRM (77 FR 10403, February 22, 2012). JAL stated that it has airplanes that have exceeded the proposed compliance time.

ANA requested that we change the compliance time for revising the maintenance program from 18 months to 45 months, or establish a grace period to coordinate with ANA's C-check maintenance schedule.

American Airlines (AA) requested clarification of the compliance times to address airplanes that are beyond the thresholds of the new tasks specified in Section 9 of the Boeing 767 MPD Document. AA stated that operators will have airplanes out of compliance with the maintenance program when Section 9 of the Boeing 767 MPD Document is incorporated.

We find that clarification of the compliance time for the initial inspection is necessary. We have added a sentence to paragraph (i)(1) of this final rule to specify that the initial compliance times for the inspections are to be done at the applicable times specified in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011 or Revision February 2014, of the Boeing 767 MPD Document; or within 18 months after the effective date of this AD; whichever occurs later.

In developing an appropriate compliance time, we considered the safety implications, the time necessary to design an acceptable modification, and normal maintenance schedules for timely accomplishment of the modification. In light of these items, we have determined that the times specified in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011 or Revision February 2014, of the Boeing 767 MPD Document; or within 18 months after the effective date of this AD; for the initial inspection is appropriate. However, under the provisions of paragraph (l) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the extension would provide an acceptable level of safety.

Request To Allow Alternate Method To Track Rotable Parts

Boeing requested that we change paragraph (i) of the NPRM (77 FR 10403, February 22, 2012) to allow Appendix 7 of FAA AC 120–93, dated November 20, 2007 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/F73FD2A31B353A71862573B000521928?OpenDocument*), or

another method approved by a principal maintenance inspector (PMI), as an alternative to the method for tracking rotable parts. Boeing stated that the current statement in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 MPD Document, is overly restrictive for the purpose of identifying fleet problems with an exploratory inspection program for removable structural components.

We do not agree with the commenter's request to change the method of compliance for tracking rotable parts. The Boeing MPD method is identical to, or less restrictive for fleet age than, the method described in FAA AC 120–93, dated November 20, 2007 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/F73FD2A31B353A71862573B000521928?OpenDocument*). This AC permits a ''conservative'' implementation schedule to be established. However, a ''conservative'' schedule is undefined and, therefore, unenforceable. As a result, the FAA guidance in the AC is inappropriate for inclusion in this final rule. No change has been made to this final rule in this regard. However, under the provisions of paragraph (l) of the final rule, we will consider requests for approval of an alternative method for compliance if sufficient data are submitted to substantiate that the alternative method would provide an acceptable level of safety.

Request To Require Maintenance Program Revision

UPS requested that we revise the text of paragraph (g) of the NPRM (77 FR 10403, February 22, 2012) to require revising the maintenance program to incorporate the identified MPD documents. UPS stated that paragraph (g) of the NPRM requires operators to revise Subsection B of Section 9 of the Boeing 767 MPD Document and Appendix B of Boeing 767 MPD Document. UPS noted that operators do not have control or revision authority over the Boeing 767 MPD documents.

We agree with this request. We have revised paragraph (g) of this final rule to clarify how to revise the maintenance program.

Requests To Permit Use of Later Revisions of Service Information

Boeing and JAL requested that we permit the use of future FAA-approved revisions of the service information.

We disagree. Using the phrase ''later-approved revisions'' violates the Office of the Federal Register regulations for approving materials that are incorporated by reference. According to the provisions of paragraph (l) of this final rule, operators may request approval of an alternative method of compliance (AMOC) to use a later revision of the referenced MPD document as an alternative, if the request is submitted with substantiating data that demonstrate the later revision will provide an adequate level of safety. We have not changed this final rule in this regard.

Requests To Expand AMOC Section To Include Previous Approvals

United Airlines (United), AA, and UPS requested that we expand the AMOC section of the NPRM (77 FR 10403, February 22, 2012) to include previous approvals for AMOCs for AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003).

We agree with the request. Repairs previously approved as AMOCs in accordance with AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003), are acceptable for compliance with the corresponding actions required by this final rule. We have added a new paragraph (l)(4) to this final rule accordingly.

Requests To Expand AMOCs To Include Certain Repairs

AA and Boeing requested that we expand the AMOC section to include repairs approved under section 25.571 of the Federal Aviation Regulations (14 CFR 25.571) and section 26.43(d) of the Federal Aviation Regulations (14 CFR 26.43(d)) as acceptable methods of compliance. AA recommended that we approve as AMOCs to the NPRM (77 FR 10403, February 22, 2012) all repairs approved by a Boeing-authorized representative on parts listed in Section 9 of the Boeing 767 MPD Document that were found to be compliant with 14 CFR 25.571 and 14 CFR 26.43(d). Boeing recommended ''grandfathering'' existing repairs to new CMRs/structural significant items (SSI) provided adequate damage tolerance has been performed at repair approval.

We agree with the commenter. We have added a new paragraph (l)(5) to this final rule to allow the following repairs done before the effective date of this AD as acceptable methods of compliance where the inspections of the baseline structure cannot be accomplished: Repairs that are approved under both section 25.571 of the Federal Aviation Regulations (14 CFR 25.571) and section 26.43(d) of the Federal Aviation Regulations (14 CFR 26.43(d)) by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO), to make those findings; provided that the repair specified an inspection program (inspection threshold, method, and repetitive interval); and that operators revised their maintenance or inspection program, as applicable, to include the inspection program for the repair.

Request for Clarification of Certain AMOC Section

Boeing requested that we revise paragraph (k)(3) of the NPRM (77 FR 10403, February 22, 2012) to include inspecting as an alternative method to satisfy the damage tolerance requirements. (Paragraph (k)(3) of the NPRM corresponds to paragraph (l)(3) of this final rule.) Boeing stated that doing so would clarify that, in cases where an operator cannot perform an inspection ''per D622T001–9 Subsection B and D622T001–DTR in baseline configuration,'' an alternate inspection type that satisfies the damage tolerance requirements can be used with an appropriate AMOC approval.

We disagree with adding the requested text to this final rule. Paragraph c. of Section 2–7 of Chapter 2, DER (designated engineering representative) Authority and Limitations, of FAA Order 8110.37E, DER Handbook, effective March 30, 2011 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgOrders.nsf/0/3679F39DB79BB62A8625786A0066C662?OpenDocument&Highlight=8110.37e*), does permit an authorized DER or other authorized representative to approve an alternative inspection method, threshold, or interval, where a new repair or modification results in the inability to accomplish the existing AD-mandated inspection, or necessitates a change in the existing AD-mandated inspection threshold. This delegation is already provided in paragraph (l)(3) of this final rule. No change has been made to the final rule in this regard.

Request To Clarify the Compliance Time for the Reporting Requirements

Delta Airlines (Delta) requested that we clarify the compliance time for the proposed reporting requirements. Delta stated that the instruction in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Revision July 2011, or Revision February 2014, of the Boeing 767 MPD

Document, specifies reporting within 10 days. Delta requested a change to state that reporting is required within 10 days after the airplane is returned to service, instead of 10 days after each individual finding.

We agree with the commenter's request. We have added new paragraph (i)(3) to this final rule to clarify that the compliance time for reporting is within 10 days after the airplane is returned to service, instead of 10 days after each individual finding. We have also added new paragraph (j) to this final rule to include the Paperwork Reduction Act Burden Statement, and re-designated subsequent paragraphs accordingly.

Other Changes to This Final Rule

We have moved the information from Note 2 of the NPRM (77 FR 10403, February 22, 2012) into paragraph (i)(2) of this final rule.

We have clarified the language in paragraph (k) of this AD and added a reference to paragraph (l) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 10403, February 22, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 10403, February 22, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 417 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise airworthiness limitations [retained action from AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003)].	1 work-hour × $85 per hour = $85.	$0	$85	$35,445
Revise airworthiness limitations [new requirement]	1 work-hour × $85 per hour = $85.	0	85	35,445

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003), and adding the following new AD:

2014–14–04 The Boeing Company: Amendment 39–17899; Docket No. FAA–2012–0145; Directorate Identifier 2011–NM–066–AD.

(a) Effective Date

This airworthiness directive (AD) is effective September 5, 2014.

(b) Affected ADs

This AD supersedes AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003).

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, line numbers 1 through 997 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 51, Standard Practices/Structures; 52, Doors; 53, Fuselage; 54, Nacelle/Pylons; 55, Stabilizers; 56, Windows; and 57, Wings.

(e) Unsafe Condition

This AD was prompted by a re-evaluation of certain doors and flaps based on their fatigue-critical nature. We are issuing this AD to detect and correct fatigue cracking of the principal structural elements (PSEs), which could adversely affect the structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of Section 9 of the Boeing 767 Maintenance Planning Data (MPD) Document

This paragraph restates the requirements of paragraph (c) of AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003), with clarification for revising the maintenance program. For Model 767–200, –300, –300F, and –400ER series airplanes having line numbers 1 through 895 inclusive: Within 18 months after October 16, 2003 (the effective date of AD 2003–18–10), revise the maintenance program to incorporate Subsection B, Section 9, of Boeing 767 MPD Document D622T001, entitled ''Airworthiness Limitations and Certification Maintenance Requirements,'' Revision October 2002, and Appendix B of Boeing 767 MPD Document D622T001, Revision December 2002; or Subsection B, Airworthiness Limitations—Structural Limitations, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 MPD Document.

(h) Retained Alternative Inspections and Inspection Intervals

This paragraph restates the alternative inspection and inspection interval limitations specified by paragraph (d) of AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003). Except as provided by paragraphs (i) and (l) of this AD: After the actions required by paragraph (g) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the structural significant items (SSIs) contained in Section 9 of Boeing 767 MPD Document D622T001–9, Revision October 2002.

(i) New Maintenance Program Revision

(1) Within 18 months after the effective date of this AD, revise the maintenance program to incorporate the Limitations section in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011 or Revision February 2014, of the Boeing 767 MPD Document. Doing this maintenance program revision terminates the requirements of paragraph (g) of this AD. The initial compliance times for the inspections are at the applicable times specified in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011 or Revision February 2014, of the Boeing 767 MPD Document; or within 18 months after the effective date of this AD; whichever occurs later.

(2) For the purposes of this AD, the terms PSEs as used in this AD, and SSIs as used in Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011 or Revision February 2014, of the Boeing 767 MPD Document, are considered to be interchangeable.

(3) Reports specified in Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011 or Revision February 2014, of the Boeing 767 MPD Document, may be submitted within 10 days after the airplane is returned to service, instead of 10 days after each individual finding, as specified in Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011 or Revision February 2014, of the Boeing 767 Maintenance Planning Data (MPD) Document.

(j) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(k) Alternative Inspections and Inspection Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m) of this AD. Information may be emailed to: *9–ANM-Seattle-ACO–AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO), to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003), are approved as AMOCs for the corresponding actions specified in this AD.

(5) Repairs done before the effective date of this AD that meet the conditions specified in paragraphs (l)(5)(i), (l)(5)(ii), and (l)(5)(iii) of this AD are acceptable methods of compliance for the repaired area where the inspections of the baseline structure cannot be accomplished.

(i) The repair was approved under both section 25.571 of the Federal Aviation Regulations (14 CFR 25.571) and section 26.43(d) of the Federal Aviation Regulations (14 CFR 26.43(d)) by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO), to make those findings.

(ii) The repair approval provides an inspection program (inspection threshold, method, and repetitive interval).

(iii) Operators revised their maintenance or inspection program, as applicable, to include the inspection program (inspection threshold, method, and repetitive interval) for the repair.

(m) Related Information

For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on September 5, 2014.

(i) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, of the Boeing 767 Maintenance Planning Data Document.

(ii) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision February 2014, of the Boeing 767 Maintenance Planning Data Document.

(4) The following service information was approved for IBR on October 16, 2003 (68 FR 53503, September 11, 2003).

(i) Appendix B of Boeing 767 Maintenance Planning Data Document D622T001, Revision December 2002.

(ii) Subsection B, Section 9, of Boeing 767 Maintenance Planning Data Document D622T001–9, Revision October 2002.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 3, 2014.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17996 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0187; Directorate Identifier 2012–NM–087–AD; Amendment 39–17917; AD 2014–15–15]

RIN 2120–AA64

Airworthiness Directives; Beechcraft Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Mitsubishi Heavy Industries, Inc. Ltd.) Model MU–300 airplanes, and Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Beech Aircraft Corporation) Model 400, 400A, and 400T airplanes. This AD was prompted by multiple reports of fatigue cracking in the horizontal stabilizer ribs. This AD requires repetitive inspections of the horizontal stabilizer rib assemblies for cracking, and replacement if necessary. We are issuing this AD to detect and correct such cracking, which could result in the failure of the horizontal stabilizer and loss of pitch control of the airplane.

DATES: This AD is effective September 5, 2014.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0187; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Paul Chapman, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: 316–946–4152; fax: 316–946–4107; email: *paul.chapman@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Mitsubishi Heavy Industries, Inc. Ltd.) Model MU–300 airplanes Type Certificate previously held by Mitsubishi; Raytheon Aircraft Company) Model MU–300 airplanes, and Hawker Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Beech Aircraft Corporation) Model 400, 400A, and 400T airplanes. The NPRM published in the **Federal Register** on April 4, 2014 (79 FR 18848). The NPRM was prompted by multiple reports of fatigue cracking in the horizontal stabilizer ribs. The NPRM proposed to require repetitive inspections of the horizontal stabilizer rib assemblies for cracking, and replacement if necessary. We are issuing this AD to detect and correct such cracking, which could result in the failure of the horizontal stabilizer and loss of pitch control of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 18848, April 4, 2014) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 18848, April 4, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 18848, April 4, 2014).

Costs of Compliance

We estimate that this AD affects 735 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	20 work-hours × $85 per hour = $1,700 per inspection cycle.	$30	$1,730 per inspection cycle	$1,271,550 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	280 work-hours × $85 per hour = $23,800	$8,321	$32,121

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2014–15–15 Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Beech Aircraft Corporation); and Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Mitsubishi Heavy Industries, Inc. Ltd.): Amendment 39–17917; Docket No. FAA–2014–0187; Directorate Identifier 2012–NM–087–AD.

(a) Effective Date

This AD is effective September 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(5) of this AD.

(1) Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Mitsubishi Heavy Industries, Inc. Ltd.) Model MU–300 airplanes, serial numbers A003SA through A093SA inclusive.

(2) Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Beech Aircraft Corporation) Model 400 airplanes, serial numbers RJ–1 through RJ–65 inclusive.

(3) Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Beech Aircraft Corporation) Model 400A airplanes, serial numbers RK–1 through RK–604 inclusive.

(4) Beechcraft Corporation (Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Beech Aircraft Corporation) Model 400T (T–1A) airplanes, serial numbers TT–1 through TT–180 inclusive.

(5) Beechcraft Corporation Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company; Beech Aircraft Corporation) Model 400T (TX), serial numbers TX–1 through TX–13 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by multiple reports of fatigue cracking in the horizontal stabilizer ribs. We are issuing this AD to detect and correct such cracking, which could result in the failure of the horizontal stabilizer and loss of pitch control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

Before the accumulation of 7,400 total flight hours or within 6 months after the effective date of this AD, whichever occurs later, perform a radiographic (x-ray) inspection or a borescope inspection for cracking of the horizontal stabilizer rib assemblies, in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Repeat the inspection thereafter at intervals not to exceed 2,400 flight hours. For an inspection

method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(h) Replacement

If any cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, replace the horizontal rib assemblies with new horizontal rib assemblies, in accordance with a method approved by the Manager, Wichita ACO. For a replacement method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD. This replacement does not terminate the repetitive inspection requirements of paragraph (g) of this AD.

(i) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be repaired (if the operator elects to do so), provided the restrictions specified in paragraphs (i)(1) through (i)(4) of this AD are followed.

(1) Do not exceed 10 flight hours of operation.

(2) Only operations under daylight conditions and under visual flight rules are allowed.

(3) Only operations with the minimum flightcrew and with no passengers are allowed.

(4) Do not exceed maneuver speed as specified in the applicable airplane flight manual.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Airframe Branch, ACE–118W, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Paul Chapman, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: 316–946–4152; fax: 316–946–4107; email: *paul.chapman@faa.gov.*

(l) Material Incorporated by Reference

None.

Issued in Renton, Washington, on July 14, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17921 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0384; Airspace Docket No. 14–ANE–6]

Amendment of Class D and Class E Airspace; Hartford, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends Class D and Class E Airspace at Hartford, CT, by updating the geographic coordinates of Hartford-Brainard Airport. This action does not change the boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, September 18, 2014. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adjusting the geographic coordinates, within Class D and Class E airspace, of Hartford-Brainard Airport, Hartford, CT, to coincide with the FAA's aeronautical database. This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Hartford-Brainard Airport, Hartford, CT.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANE CT D Hartford, CT [Amended]

Hartford-Brainard Airport, CT
(Lat. 41°44′12″ N., long. 72°38′58″ W.)

That airspace extending upward from the surface up to and including 2,500 feet MSL

within a 4.6-mile radius of Hartford-Brainard Airport from the Hartford-Brainard Airport 158° bearing clockwise to the Hartford-Brainard Airport 052° bearing, and within a 6-mile radius of the Hartford-Brainard Airport from the Hartford-Brainard Airport 052° bearing clockwise to the 158° bearing. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE CT E5 Hartford, CT [Amended]

Hartford-Brainard Airport, CT
(Lat. 41°44′12″ N., long. 72°38′58″ W.)

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Hartford-Brainard Airport.

Issued in College Park, Georgia, on July 24, 2014.

Myron A. Jenkins,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2014–18067 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 140627545–4617–01]

RIN 0694–AG22

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding sixteen persons under nineteen entries to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the destinations of Afghanistan, China, Hong Kong, Iran, and the United Arab Emirates (U.A.E.). There are nineteen entries for sixteen persons because three persons are listed under multiple destinations, resulting in three additional entries: one person in the U.A.E. has an address in Iran and two persons in China each have one address in Hong Kong.

DATES: This rule is effective August 1, 2014.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) notifies the public about entities that have engaged in activities that could result in increased risk of diversion of exported, reexported or transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests. Certain exports, reexports, and transfers (in-country) to entities on the Entity List require licenses from BIS. License applications are reviewed with a presumption of denial. The availability of license exceptions for exports, reexports on transfers (in-country) is very limited. The license review policy for each entity is identified in the license review policy column on the Entity List. The availability of license exceptions is noted in the **Federal Register** notices adding persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-user Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add sixteen persons under nineteen entries to the Entity List on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The nineteen entries added to the Entity List consist of five entries in Afghanistan, seven entries in China, two entries in Hong Kong, one entry in Iran, and four entries in the U.A.E.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these sixteen persons to the Entity List. Under that paragraph, entities for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved, in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such persons may be added to the Entity List. Paragraphs (b)(1) through (b)(5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The ERC determined to add four persons—FIMCO FZE, Crescent International Trade and Services FZE, Khosrow Kasraei, and Mujhid Ali– to the Entity List under five entries under the destinations of Iran and the U.A.E. on the basis of their involvement in activities contrary to the national security and foreign policy of the United States, under § 744.11(b)(2). These companies and their affiliates have been engaging in conduct that poses a risk of violating the EAR, specifically with regard to the attempted illicit reexport of U.S.-origin items to Iran, under § 744.11(b)(2). These four persons were involved in the attempted export of a lathe machine subject to the EAR to Iran in violation of Department of the Treasury, Office of Foreign Assets Control regulations and the EAR. Lathe machines are used in the production of high grade steel or ''bright steel'', which in turn may be used, among other things, in the manufacture of automobile and aircraft parts.

The ERC determined to add five persons—Emal Bilal Construction Company, Wahab Karwan Construction Company, Mohammad Jan Khan Mangal, Shan Mahmoud Khan Mangal, and Emal Bilal Mangal—to the Entity List under the destination of Afghanistan for involvement in activities contrary to the national security and foreign policy interests of the United States, specifically the activities described under paragraph (b)(1) (Supporting persons engaged in acts of terror) of § 744.11 of the EAR. These persons have engaged in activities in support of persons designated by the Secretary of State as a Foreign Terrorist Organization (FTO). The persons designated as FTOs were so designated as a result of their activities against U.S. and coalition forces in Afghanistan contrary to the national security and foreign policy of the United States.

The ERC determined to add four persons—Beijing Aeronautics Yangpu Technology Investment Company (BAYTIC), Chengdu GaStone Technology Co. Ltd. (CGTC), China Electronics Technology Group Corporation 29 (CETC 29) Research Institute, and Jiangsu Leidian Technology Company (JLTC)—to the Entity List under the destination of China on the basis of their involvement in activities contrary to the national security and foreign policy interests of the United States. Specifically, the ERC determined that these persons have been involved in the activities described under paragraph § 744.11(b)(5) of the EAR. Paragraph (b)(5) specifies that the types of activities that could be contrary to the national security or foreign policy interests of the United States include engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the ERC believes that prior review of exports, reexports, or transfers (in-country) involving the party and the possible imposition of license conditions or license denial enhances BIS's ability prevent violations of the EAR. The ERC has reasonable cause to believe that BAYTIC, CGTC, CETC 29 Research Institute and JLTC, have been involved in the illicit procurement of commodities and technologies for unauthorized military end use in China.

The ERC also determined to add one person located in China—Qing'an International Trading Group (QTC)—to the Entity List on the basis of its involvement in activities contrary to the national security and foreign policy interests of the United States. Specifically, the ERC determined that this person has been involved in the activities described under paragraph § 744.11(b)(5) of the EAR. The ERC has reasonable cause to believe that Qing'an International Trading Group has been involved in the illicit procurement of commodities and technologies for unauthorized military end use in China.

Finally, the ERC determined that PRC Lode Technology Company and Su Bin, both located in both China and Hong Kong, should be added to the Entity List on the basis of their involvement in activities contrary to the national security and foreign policy interests of the United States. Specifically, the ERC determined that these two persons have been involved in the activities described under paragraph § 744.11(b)(5) of the EAR. The ERC has reasonable cause to believe that PRC Lode Technology Company and Su Bin have been involved in the unauthorized exploitation of computer systems of U.S. companies and Department of Defense contractors to illicitly obtain and export information, including controlled technology related to military projects, contrary to U.S. law.

For the sixteen persons recommended for addition, the ERC specified a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule.

This final rule adds the following sixteen persons under nineteen entries to the Entity List:

Afghanistan

(1) *Emal Bilal Construction Company (EBCC),* a.k.a., the following two aliases:

—Imal Bilal Road Construction Company; *and*

—Aimal and Balal Company.

Kolola Pushta, Charahi Gul-e-Surkh, Kabul, Afghanistan; *and*

Maidan Sahr, Hetefaq Market, Paktiya, Afghanistan;

(2) *Emal Bilal Mangal,* a.k.a., the following three aliases:

—Imal Bilal; *and*

—Aimal Balal; *and*

—Bellal Mangal.

Kolola Pushta, Charahi Gul-e-Surkh, Kabul, Afghanistan; *and*

Maidan Sahr, Hetefaq Market, Paktiya, Afghanistan;

(3) *Mohammad Jan Khan Mangal*

Kolola Pushta, Charahi Gul-e-Surkh, Kabul, Afghanistan; *and*

Maidan Sahr, Hetefaq Market, Paktiya, Afghanistan;

(4) *Shan Mahmoud Khan Mangal*

Kolola Pushta, Charahi Gul-e-Surkh, Kabul, Afghanistan; *and*

Maidan Sahr, Hetefaq Market, Paktiya, Afghanistan;

(5) *Wahab Karwan Construction Company (WKCC)*

Qabel Boy, Jalalabad Road, District 9, Kabul, Afghanistan.

China

(1) *Beijing Aeronautics Yangpu Technology Investment Company (BAYTIC),* a.k.a., the following three aliases:

—Beijing Aerospace Yangpu Technology Investment Company; *and*

—Tian Hang Yang Pu Technology Investment Limited Company; *and*

—Bei Jing Tian Hang Yang Pu Technology Investment Limited Company.

No. 27 Xiaoyun Road, Chaoyang District, Beijing 100027, China; *and*

Room 3120, Building 1, 16 Zhufang Road, Haidian District, Beijing, China;

(2) *Chengdu GaStone Technology Co., Ltd. (CGTC),*

31F, A Tower, Yanlord Square, No. 1, Section 2, Renmind South Road, Chengdu, China;

(3) *China Electronics Technology Group Corporation 29 (CETC 29) Research Institute,* a.k.a., the following two aliases:

—CETC 29th Research Institute; *and*

—China Southwest Electronic Equipment Research Institute (SWIEE).

No. 496 West Yingkang Road, Chengdu, Sichuan Province 610036, China; *and*

Box #429, #1 Waixichadianziheng Street, Chengdu, Sichuan Province 610036, China;

(4) *Jiangsu Leidian Technology Company (JLTC),*

88 Luyuan Road, Yixing Environmental Sciences Park, Jiangsu Province, China;

(5) *PRC Lode Technology Company,*

Room 8306 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and*

Room 801, Unit 1, Building 8 Caiman Street, Chaoyang Road, Beijing 100025, China; *and*

Building 1–1, No. 67 Caiman Str., Chaoyang Road, Beijing 100123 China; *and*

Room A407 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and*

Rm 602, 5/F, No. 106 NanHu Road, ChaoYang District, Beijing, China (See alternate addresses under Hong Kong);

(6) *Qing'an International Trading Group,* a.k.a., the following three aliases:

—Qing'an International Trading Group Company; *and*

—Qing'an Company Shenzhen Station; *and*

—China Qing'an International Trading Group.

No. 27 Xiaoyun Road, Chaoyang District, Beijing 100027 China; *and*

Room 901, Qing An Building, No. 27, Xiaoyun Road, Chaoyang District, Beijing 100027, China;

(7) *Su Bin,* a.k.a., the following two aliases:

—Stephen Subin; *and*

—Steve Su.
Room 8306 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and*
Room 801, Unit 1, Building 8 Caiman Street, Chaoyang Road, Beijing 100025, China; *and*
Building 1–1, No. 67 Caiman Str., Chaoyang Road, Beijing 100123, China; *and*
Room A407 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and*
Rm 602, 5/F, No. 106 NanHu Road, ChaoYang District, Beijing, China (See alternate addresses under Hong Kong).

Hong Kong

(1) *PRC Lode Technology Company,*
Rm 1019–1020 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong; *and*
Room 1522 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong (See alternate addresses under China);

(2) *Su Bin,* a.k.a., the following two aliases:
—Stephen Subin; *and*
—Steve Su.
Rm 1019–1020 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong; *and*
Room 1522 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong (See alternate addresses under China).

Iran

(1) *FIMCO FZE,*
No. 3, Rahim Salehi Alley, Akbari St., Roomi Bridge, Dr. Shariati Ave, P.O. Box 3379, Tehran, Iran 3379/19395 (See alternate address under U.A.E.).

United Arab Emirates

(1) *Crescent International Trade and Services FZE,*
Office No. B34BS33O111, Jebel Ali, U.A.E.;

(2) *FIMCO FZE,*
LOB 16, F16401, P.O. Box 61342, JAFZ, U.A.E. (See alternate address under Iran).

(3) *Khosrow Kasraei,*
P.O. Box 61342, Jebel Ali, U.A.E.;

(4) *Mujahid Ali,* a.k.a. the following one alias:
—Mujahid Ali Mahmood Ali
Office No. B34BS33O111, Jebel Ali, U.A.E.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on August 1, 2014, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. For the sixteen persons added under nineteen entries to the Entity List in this final rule, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List if a proposed rule is published, doing so would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013); Notice of January 21, 2014, 79 FR 3721 (January 22, 2014).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By adding under Afghanistan, in alphabetical order, five Afghani entities;

■ b. By adding under China, in alphabetical order, seven Chinese entities;

■ c. By adding under Hong Kong, in alphabetical order, two Hong Kong entities;

■ d. By adding under Iran, one Iranian entity; and

■ e. By adding under United Arab Emirates, in alphabetical order, four Emirati entities.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
*	* * *	* * *	* * *	*
AFGHANISTAN				
	* * *	* * *	* * *	
	Emal Bilal Construction Company (EBCC), a.k.a., the following two aliases: —Imal Bilal Road Construction Company; *and* —Aimal and Balal Company. Kolola Pushta, Charahi Gul-e-Surkh, Kabul, Afghanistan; *and* Maidan Sahr, Hetefaq Market, Paktiya, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* * *	* * *	* * *	
	Emal Bilal Mangal, a.k.a., the following three aliases: —Imal Bilal; *and* —Aimal Balal; *and* —Bellal Mangal. Kolola Pushta, Charahi Gul-e-Surkh, Kabul, Afghanistan; *and* Maidan Sahr, Hetefaq Market, Paktiya, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* * *	* * *	* * *	
	Mohammad Jan Khan Mangal, Kolola Pushta, Charahi Gul-e-Surkh, Kabul, Afghanistan; *and* Maidan Sahr, Hetefaq Market, Paktiya, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* * *	* * *	* * *	
	Shan Mahmoud Khan Mangal, Kolola Pushta, Charahi Gul-e-Surkh, Kabul, Afghanistan; *and* Maidan Sahr, Hetefaq Market, Paktiya, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.

Country	Entity	License requirement	License review policy	Federal Register citation
*	* *	*	*	*
	Wahab Karwan Construction Company (WKCC), Qabel Boy, Jalalabad Road, District 9, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	*	*
	* *	*	*	*
CHINA				
	* *	*	*	*
	Beijing Aeronautics Yangpu Technology Investment Company (BAYTIC), a.k.a., the following three aliases: —Beijing Aerospace Yangpu Technology Investment Company; *and* —Tian Hang Yang Pu Technology Investment Limited Company; *and* —Bei Jing Tian Hang Yang Pu Technology Investment Limited Company. No. 27 Xiaoyun Road, Chaoyang District, Beijing 100027, China; *and* Room 3120, Building 1, 16 Zhufang Road, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	*	*
	Chengdu GaStone Technology Co., Ltd. (CGTC), 31F, A Tower, Yanlord Square, No. 1, Section 2, Renmind South Road, Chengdu, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	*	*
	China Electronics Technology Group Corporation 29 (CETC 29) Research Institute, a.k.a., the following two aliases: —CETC 29th Research Institute; *and* —China Southwest Electronic Equipment Research Institute (SWIEE) No. 496 West Yingkang Road, Chengdu, Sichuan Province 610036, China; *and* Box #429, #1 Waixichadianziheng Street, Chengdu, Sichuan Province 610036, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	*	*
	Jiangsu Leidian Technology Company (JLTC), 88 Luyuan Road, Yixing Environmental Sciences Park, Jiangsu Province, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.

Country	Entity	License requirement	License review policy	Federal Register citation
	* *	*	* *	
	PRC Lode Technology Company, Room 8306 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and* Room 801, Unit 1, Building 8 Caiman Street, Chaoyang Road, Beijing 100025, China; *and* Building 1–1, No. 67 Caiman Str., Chaoyang Road, Beijing 100123, China; *and* Room A407 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and* Rm 602, 5/F, No. 106 NanHu Road, ChaoYang District, Beijing, China (See alternate addresses under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	* *	
	Qing'an International Trading Group, a.k.a., the following three aliases: —Qing'an International Trading Group Company; *and* —Qing'an Company Shenzhen Station; *and* —China Qing'an International Trading Group. No. 27 Xiaoyun Road, Chaoyang District, Beijing 100027, China; *and* Room 901, Qing An Building, No. 27, Xiaoyun Road, Chaoyang District, Beijing, China 100027, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	* *	
	Su Bin, a.k.a., the following two aliases: —Stephen Subin; *and* —Steve Su. Room 8306 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and* Room 801, Unit 1, Building 8 Caiman Street, Chaoyang Road, Beijing 100025, China; *and* Building 1–1, No. 67 Caiman Str., Chaoyang Road, Beijing 100123, China; *and* Room A407 Kelun Building, 12A Guanghua Road, Chaoyang, Beijing 100020, China; *and* Rm 602, 5/F, No. 106 NanHu road, ChaoYang District, Beijing, China (See alternate addresses under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	* *	

Country	Entity	License requirement	License review policy	Federal Register citation
* * *	*	*	*	*
HONG KONG				
	* *	*	*	*
	PRC Lode Technology Company, Rm 1019–1020 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong; *and* Room 1522 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong (See alternate addresses under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	*	*
	Su Bin, a.k.a., the following two aliases: —Stephen Subin; *and* —Steve Su. Rm 1019–1020 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong; *and* Room 1522 Nan Fung Centre, 264–298 Castle Peak Road, Tsuen Wan New Territories, Hong Kong (See alternate addresses under China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	*	*
IRAN				
	* *	*	*	*
	FIMCO FZE, No. 3, Rahim Salehi Alley, Akbari St., Roomi Bridge, Dr. Shariati Ave, P.O. Box 3379, Tehran, Iran 3379/19395 (See alternate address under U.A.E.).	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE] 8/1/2014.
* * *	*	*	*	*
UNITED ARAB EMIRATES				
	* *	*	*	*
	Crescent International Trade and Services FZE, Office No. B34BS33O111, Jebel Ali, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	*	*
	FIMCO FZE, LOB 16, F16401, P.O. Box 61342, JAFZ, U.A.E. (See alternate addresses under Iran).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
	* *	*	*	*
	Khosrow Kasraei, P.O. Box 61342, Jebel Ali, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.

Country	Entity	License requirement	License review policy	Federal Register citation
	* *	*	* *	
	Mujahid Ali, a.k.a. the following one alias: —Mujahid Ali Mahmood Ali Office No. B34BS33O111, Jebel Ali, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	79 FR [INSERT FR PAGE NUMBER] 8/1/2014.
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* * *	*	* *	*	*

Dated: July 25, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2014–17960 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2014–0001; T.D. TTB–122; Ref: Notice No. 141]

RIN 1513–AC03

Establishment of the Manton Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the 11,178-acre ''Manton Valley'' viticultural area in Shasta and Tehama Counties in northern California. The viticultural area does not lie within or contain any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective September 2, 2014.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR 4) authorizes the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR 9) sets forth the standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Manton Valley Petition

TTB received a petition from Mark Livingston, of Cedar Crest Vineyards, on behalf of Cedar Crest Vineyards and other vineyard and winery owners in Manton, California, proposing the establishment of the 11,178-acre ''Manton Valley'' AVA in portions of Shasta and Tehama Counties in northern California. Eleven commercial vineyards, covering approximately 200 acres, are distributed across the proposed AVA. The proposed AVA also has six bonded wineries. The proposed AVA is not located within any other AVA.

According to the petition, the distinguishing features of the proposed Manton Valley AVA are its topography, climate, and soils. The proposed AVA is stream-cut valley with a flat-to-gently-rolling floor and slope angles ranging from 0 to 30 percent and elevations between 2,000 and 3,500 feet. The moderately warm daytime temperatures within the proposed AVA are suitable for growing warmer varieties of grapes such as Merlot, Cabernet Sauvignon, and Zinfandel. At night, the temperature within the proposed AVA drops lower than in the surrounding regions, giving the proposed AVA an average diurnal temperature difference of 38.3 degrees at the peak of the growing season. The annual rainfall amount within the proposed AVA is a moderate 33.65 inches, with most rainfall occurring outside the growing season. Finally, the soils within the proposed AVA are comprised primarily of volcanic ash and weathered volcanic rock and are mainly Cohasset gravelly loams, Forward sandy loams, and Manton sandy loams.

To the north of the proposed Manton Valley AVA, the terrain is steeper and elevations are higher. Daytime temperatures are similar to those of the proposed AVA, but the nighttime temperatures are higher, resulting in a lower diurnal temperature difference. Rainfall amounts are higher north of the proposed AVA, and the soils are predominately Windy and McCarthy stony loams. To the east of the proposed AVA, elevations are higher and slope angles are greater. The growing season temperatures are significantly cooler, and rainfall amounts are higher. Soils east of the proposed AVA are very shallow and stony and are predominately of the Sheld series. To the south of the proposed AVA, elevations are lower and slope angles are greater. Growing season temperatures are significantly higher than within the proposed AVA. The soils south of the proposed AVA are of the Supan and Toomes series, which are excessively stony and are primarily used for grazing livestock. The region to the west of the proposed AVA is characterized by low elevations and large plateaus. Temperatures in the region are significantly warmer than within the proposed AVA, and there is less rainfall. Soils west of the proposed AVA are mainly of the Guenoc and Toomes series, which are excessively stony and lacking in nutrients.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 141 in the **Federal Register** on January 14, 2014 (79 FR 2399), proposing to establish the Manton Valley AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed Manton Valley AVA, and for a comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 141.

In Notice No. 141, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. The comment period closed on March 17, 2014.

In response to Notice No. 141, TTB received a total of six comments, all of which supported the establishment of the Manton Valley AVA. The commenters included a local farm owner who previously worked at a local vineyard, a local vineyard owner, a geographer at Eastern Illinois University who has studied the geology and geography of the region of the proposed AVA, a winery owner who consults with a local winery, and two individuals who listed no affiliation. The comments did not raise any new issues concerning the proposed AVA. TTB received no comments opposing the Manton Valley AVA as proposed.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 141, TTB finds that the soil, climate, and topography evidence provided by the petitioner sufficiently distinguishes the proposed Manton Valley AVA from the surrounding regions. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the 11,178-acre ''Manton Valley'' AVA in portions of Shasta and Tehama Counties, California, effective 30 days from the publication date of this document.

In the regulatory text of this final rule, TTB is also correcting a typographical error that occurred in the publication of the proposed rule. In paragraph (c)(7) of the regulatory text, the phrase ''proceed westerly on Rock Creek Road,'' which appeared in the proposed rule, has been corrected in this final rule to read ''proceed easterly on Rock Creek Road.'' No other changes have been made to the regulatory text.

Boundary Description

See the narrative description of the boundary of the AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

With the establishment of this AVA, its name, ''Manton Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using the name ''Manton Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Manton Valley AVA will not affect any existing AVA. The establishment of the Manton

Valley AVA will allow vintners to use ''Manton Valley'' as an appellation of origin for wines made from grapes grown within the Manton Valley AVA if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.236 to read as follows:

§ 9.236 Manton Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Manton Valley''. For purposes of part 4 of this chapter, ''Manton Valley'' is a term of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Manton Valley viticultural area are titled:

(1) Manton, CA, 1995;

(2) Shingletown, CA, 1985 (provisional); and

(3) Grays Peak, CA, 1995.

(c) *Boundary.* The Manton Valley viticultural area is located in Shasta and Tehama Counties in northern California. The boundary of the Manton Valley viticultural area is as described below:

(1) The beginning point is on the Manton map, in the community of Manton, at the intersection of three unnamed light-duty roads known locally as Manton Road, Forward Road, and Rock Creek Road, section 21, T30N/R1E. From the beginning point, proceed northerly, then northeasterly on Rock Creek Road approximately 0.8 mile to the road's intersection with an unnamed light-duty road known locally as Wilson Hill Road, section 21, T30N/R1E; then

(2) Proceed westerly, then northerly on Wilson Hill Road, crossing onto the Shingletown map, then continue westerly, then northerly, then northeasterly on the turning Wilson Hill Road, approximately 4 miles in total distance, to the road's intersection with the marked power line in section 8, T30N/R1E; then

(3) Proceed east-southeasterly along the marked power line, crossing onto the Manton map, approximately 1.1 miles to the power line's intersection with the Volta Powerhouse, section 16, T30N/R1E; then

(4) From the Volta Powerhouse, proceed south-southeasterly (downstream) along an aqueduct and penstock, approximately 0.7 mile in total distance, to the penstock's intersection with the North Fork of Battle Creek, section 16, T30N/R1E; then

(5) Proceed north-northeasterly (upstream) along the North Fork of Battle Creek approximately 0.3 mile to the confluence of Bailey Creek, section 15, T30N/R1E; then

(6) Proceed east-northeasterly (upstream) along Bailey Creek approximately 2 miles to the creek's intersection with an unnamed light-duty road known locally as Manton Ponderosa Way, section 11; T30N/R1E; then

(7) Proceed southeasterly along Manton Ponderosa Way approximately 1.8 miles to the road's intersection with Rock Creek Road, and then proceed easterly on Rock Creek Road approximately 0.05 mile to the road's intersection with an unnamed light-duty road known locally as Forwards Mill Road, section 19, T30N/R2E; then

(8) Proceed easterly along Forwards Mill Road approximately 4.5 miles, crossing onto the Grays Peak map, to the road's intersection with an unnamed light-duty road known locally as Forward Road, section 26, T30N/R2E; then

(9) Proceed generally westerly along Forward Road approximately 4.8 miles, crossing onto the Manton map, to the road's intersection with an unnamed light-duty road known locally as Ponderosa Way, section 31, T30N/R2E; then

(10) Proceed southerly along Ponderosa Way approximately 1.7 miles to the road's intersection with an unimproved road (Pacific Gas and Electric service road, approximately 0.25 mile west-southwest of Bluff Springs), section 1, T29N/R1E; then

(11) Proceed westerly along the unimproved road approximately 2.2 miles to the road's intersection with the South Battle Creek Canal, section 3, T29N/R1E; then

(12) Proceed generally northwesterly (downstream) along the meandering South Battle Creek Canal approximately 1.3 miles to the canal's intersection with an unimproved road known locally as South Powerhouse Road, section 4, T29N/R1E; then

(13) Proceed northerly along South Powerhouse Road approximately 2 miles to the road's intersection with an unnamed light-duty road known locally as Manton Road, section 21, T30N/R1E; then

(14) Proceed easterly along Manton Road approximately 0.1 mile, returning to the beginning point.

Signed: June 23, 2014.

John J. Manfreda,

Administrator.

Approved: June 23, 2014.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2014–18265 Filed 7–31–14; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0714]

RIN 1625–AA08

Special Local Regulation; Annual Events on the Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its safety of life on navigable waters regulations by adding two Special Local Regulations within the Captain of the Port Detroit Zone on the Maumee River,

Toledo, Ohio. These special local regulated areas are necessary to protect spectators, participants, and vessels from the hazards associated with these races. These regulations are intended to regulate vessel movement in portions of the Maumee River during the annual Dragon Boat Races and Frogtown Races.

DATES: This rule is effective without actual notice August 1, 2014. For the purposes of enforcement, actual notice will be used from July 19, 2014, until August 1, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket number USCG–2012–0714. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Daniel O'Leary, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6041, email *daniel.s.oleary@uscg.mil.* If you have questions on viewing material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
SNPRM Supplemental Notice of Proposed Rulemaking

A. Regulatory History and Information

On September 10, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation; Partnership in Education Dragon Boat Race, Maumee River Toledo, OH in the **Federal Register** (77 FR 55436). The NPRM proposed to amend 33 CFR Part 100 to add a special local regulation for the Partnership in Education Dragon Boat Race on the Maumee River, Toledo, OH. We did not request public meeting, and no public meetings were held for the NPRM. However, one public comment was received in response to the NPRM publication in the **Federal Register**, which we addressed in the *Discussion of Proposed Rule* section of a May 9, 2014 supplemental notice of proposed rulemaking (79 FR 26661) entitled Special Local Regulation; Annual Events on the Maumee River.

In that SNPRM, the Coast Guard proposed further amending 33 CFR Part 100 to add a special local regulation for the Frogtown Races which is also conducted on the Maumee River, Toledo, OH. We did not request a public meeting, and no public meetings were held for the SNPRM. Additionally, no public comments were received in response to the SNPRM publication in the **Federal Register**.

Although the Coast Guard provided prior notice and an opportunity to comment on these proposed Special Local Regulations, we find that good cause exists for making this final rule effective less than 30 days after publication in the **Federal Register** to accommodate the 2014 Partnership in Education, Dragon Boat Races, which is scheduled for July 19, 2014. Waiting 30 days after publication for this rule to take effect would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to enforce the Special Local Regulation for this annual event to mitigate the extra and unusual hazards associated with the annual event.

B. Basis and Purpose

Each year, two organized racing events take place on the Maumee River. The Dragon Boat Races, in which participants paddle Hong Kong-style Dragon Boats from International Park at approximate River Mile 4.45 to just south of the mouth of Swan Creek at approximate River Mile 4.77 on the Maumee River, Toledo, OH; and the Frogtown Races, in which participants row shell boats from the Norfolk and Southern Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16 on the Maumee River, Toledo, OH. The Captain of the Port Detroit has determined that these boat races, which are in close proximity to watercraft and in the shipping channel pose extra and unusual hazards to public safety and property, including potential collisions, allisions, and individuals falling in the water. Thus, the Captain of the Port Detroit has determined it necessary to establish a permanent Special Local Regulation around each location of these two races to ensure the safety of persons and property at these annual events and to help minimize the associated risks.

C. Discussion of Comments, Changes and the Final Rule

As stated in the *Regulatory History and Information* section, the Coast Guard received one comment in response to the September 10, 2012 NPRM publication. The comment noted a clause in the preamble of the NPRM that ''the races will stop for oncoming freighter or commercial traffic,'' was not included in proposed regulatory text and recommended that the clause should be included. In the May 9, 2014 SNPRM, we concurred with the comment and included the clause in the proposed regulatory text of the rule. Although the Coast Guard's position remains unchanged on this comment, we note the event permitting process includes communication of the event between sponsors and local commercial entities, with the goal of coordinating event schedules with commercial vessel arrivals or departures. Public and sponsor concerns with vessel traffic are taken into consideration during the permitting process.

As a change from the SNPRM, this rule includes language reflecting the enforcement of the Special Local Regulation for the Partnership in Education, Dragon Boat Races from 6 a.m. to 6 p.m. on July 19, 2014.

The Captain of the Port Detroit will establish the following Special Local Regulations:

Dragon Boat Races, Maumee River, Toledo, OH: This Special Local Regulation encompasses all navigable waters of the United States on the Maumee River, Toledo, OH, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41°39′5.27″ N; 083°31′34.01″ W straight across the river along the Cherry Street bridge to position 41°39′12.83″ N; 083°31′42.58″ W and a line extending from a point of land just south of International Park at position 41°38′46.62″ N; 083°31′50.54″ W straight across the river to the shore adjacent to position 41°38′47.37″ N; 083°32′2.05″ W (NAD 83). It would be enforced annually on the third or fourth Saturday in July. The exact dates and times would be issued annually via a Notice of Enforcement. For 2014, the Captain of the Port Detroit will enforce this Special Local Regulation from 6 a.m. to 6 p.m. on July 19, 2014.

Frogtown Races, Maumee River, Toledo, OH: The Special Local Regulation would encompass all U.S. waters on the Maumee River, Toledo, OH from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16. It will be enforced annually on the third or fourth Saturday in September. The exact dates and times will be issued annually via a Notice of Enforcement.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

The Special Local Regulations, established by this rule, will be relatively small and be enforced for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the area when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the areas designated as special local regulations during the dates and times the special local regulations are being enforced.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: The special local regulations will be enforced 1 day each is enforced annually. In addition, on-scene representatives will allow vessels to transit along the Western side of the river at a slow no wake speed. The race committees will stop the races for any oncoming commercial traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3 (a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards of The National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

14. Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Commandant Instruction because it involves the establishment of a Special Local Regulation. A preliminary environmental checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.927 to read as follows:

§ 100.927 Special Local Regulation, Partnership in Education, Dragon Boat Festival, Toledo, OH.

(a) *Regulated Area.* The regulated area includes all U.S. navigable waters of the Maumee River, Toledo, OH, between a line starting from a point on land just north of the Cherry Street Bridge at position 41°39′5.27″ N; 083°31′34.01″ W straight across the river along the Cherry Street bridge to position 41°39′12.83″ N; 083°31′42.58″ W and a line extending from a point of land just south of International Park at position 41°38′46.62″ N; 083°31′50.54″ W straight across the river to the shore just south of the mouth of Swan Creek at position 41°38′47.37″ N; 083°32′2.05″ W (NAD 83).

(b) *Enforcement period.* This section will be enforced annually on the third or fourth Saturday of July. The exact dates and times would be issued annually via a Notice of Enforcement. However, for 2014, this section will be enforced from 6 a.m. to 6 p.m. on July 19, 2014.

(c) *Special Local Regulations.* (1) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, in a manner which will not endanger participants in the event or any other craft and remain vigilant for event participants and safety craft. Additionally, vessels must yield right-of-way for event participants and event safety craft and must follow directions given by the Coast Guard's Patrol Commander. The rules contained in the above two sentences do not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. Commercial vessels will have right-of-way over event participants and event safety craft. The races will stop for oncoming freighter or commercial traffic and will resume after the vessel has completed its passage through the regulated area. The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled must stop and comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Patrol Commander may establish vessel size and speed limitations and operating conditions and may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(2) Patrol Commander means a Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to monitor a regatta area, permit entry into the regatta area, give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the Captain of the Port. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.''

■ 3. Add § 100.928 to read as follows:

§ 100.928 Special Local Regulations, Frogtown Race Regatta, Toledo, OH.

(a) *Regulated Area.* The regulated area includes all U.S. navigable waters of the Maumee River, Toledo, OH, from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16.

(b) *Enforcement period.* This section will be enforced annually on the third or fourth Saturday of September. The exact dates and times would be issued annually via a Notice of Enforcement.

(c) *Special Local Regulations.* (1) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, in a manner which will not endanger participants in the event or any other craft and remain vigilant for event participants and safety craft. Additionally, vessels must yield right-of-way for event participants and event safety craft and must follow directions given by the Coast Guard's Patrol Commander. The rules contained in the above two sentences do not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. Commercial vessels will have right-of-way over event participants and event safety craft. The races will stop for oncoming freighter or commercial traffic and will resume after the vessel has completed its passage through the regulated area. The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled must stop and comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Patrol Commander may establish vessel size and speed limitations and operating conditions and may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(2) Patrol Commander means a Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to monitor a regatta area, permit entry into the regatta area,

give legally enforceable orders to persons or vessels within the regatta area, and take other actions authorized by the Captain of the Port. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.''

Dated: July 16, 2014.

S.B. Lemasters,

Captain, U.S. Coast Guard, Captain of the Port, Sector Detroit.

[FR Doc. 2014–18287 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–1018]

Special Local Regulation; Seattle Seafair Unlimited Hydroplane Race, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Seattle Seafair Unlimited Hydroplane Race Special Local Regulation on Lake Washington, WA from 8:00 a.m. on August 1, 2014 through 11:59 p.m. on August 3, 2014 during hydroplane race times. This action is necessary to ensure public safety from the inherent dangers associated with high-speed races while allowing access for rescue personnel in the event of an emergency. During the enforcement period, no person or vessel will be allowed to enter the regulated area without the permission of the Captain of the Port, on-scene Patrol Commander or Designated Representative.

DATES: The regulations in 33 CFR 100.1301 will be enforced from 8:00 a.m. on August 1, 2014 through 11:59 p.m. on August 3, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LTJG Johnny Zeng, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6175, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Seattle Seafair Unlimited Hydroplane Race Special Local Regulation in 33 CFR 100.1301 from 8:00 a.m. on August 1, 2014 through 11:59 p.m. on August 3, 2014.

Under the provisions of 33 CFR 100.1301, the Coast Guard will restrict general navigation in the following area: All waters of Lake Washington bounded by the Interstate 90 (Mercer Island/Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

The regulated area has been divided into two zones. The zones are separated by a line perpendicular from the I–90 Bridge to the northwest corner of the East log boom and a line extending from the southeast corner of the East log boom to the southeast corner of the hydroplane race course and then to the northerly tip of Ohlers Island in Andrews Bay. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Coast Guard Auxiliary vessels, in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the ''Patrol Commander''). The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters during the periods this regulation is in effect. The Patrol Commander may be assisted by other federal, state and local law enforcement agencies.

Only vessels authorized by the Patrol Commander may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by the Patrol Commander.

During the times in which the regulation is in effect, the following rules shall apply:

(1) Swimming, wading, or otherwise entering the water in Zone I by any person is prohibited while hydroplane boats are on the racecourse. At other times in Zone I, any person entering the water from the shoreline shall remain west of the swim line, denoted by buoys, and any person entering the water from the log boom shall remain within ten (10) feet of the log boom.

(2) Any person swimming or otherwise entering the water in Zone II shall remain within ten (10) feet of a vessel.

(3) Rafting to a log boom will be limited to groups of three vessels.

(4) Up to six (6) vessels may raft together in Zone II if none of the vessels are secured to a log boom. Only vessels authorized by the Patrol Commander, other law enforcement agencies or event sponsors shall be permitted to tow other watercraft or inflatable devices.

(5) Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(6) Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

(7) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The Captain of the Port may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1301 and 5 U.S.C. 552(a). If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 21, 2014.

T.A. Griffitts,

Captain, U.S. Coast Guard Acting Captain of the Port, Puget Sound.

[FR Doc. 2014–18286 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0710]

RIN 1625–AA09

Drawbridge Operation Regulation; Mantua Creek, Paulsboro, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the New Jersey State Route 44 lift bridge over Mantua Creek at mile marker 1.7, near Paulsboro, NJ. The new rule will change the time of year that the bridge opens on signal. For the months that no

longer open on signal, the bridge will open with four hours advanced notice.

DATES: This rule is effective September 2, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0710]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mrs. Jessica Shea, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757–398–6422, email *jessica.c.shea2@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
NJDOT New Jersey Department of Transportation
§ Symbol
U.S.C. United States Code

A. Regulatory History and Information

On October 28, 2013, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Mantua Creek, Paulsboro, NJ'' in the **Federal Register** (78 FR 64186). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The bridge owner, NJDOT, requested a change in the operation regulation at 33 CFR 117.729(b) for the State Route 44 bridge, mile 1.7, across Mantua Creek. The majority of vessels that use this waterway are recreational boats that travel during the summer and fall months of May through October. The current operating schedule requires openings on signal from 7 a.m. to 11 p.m. between the months of March, April, and November and a 4 hour advance notice at all other times. NJDOT provided the Coast Guard with the bridge tender logs dating back to 2007 to illustrate the marine traffic patterns on Mantua Creek. Based on the information provided by the bridge tenders there have been very few requests requiring openings between March 1 through April 30 and November 1 through November 30 during the 7 a.m. to 11 p.m. time period. (See Table A)

TABLE A—BRIDGE OPENINGS FOR JANUARY 2007–JUNE 2013

Month	2013	2012	2011	2010	2009	2008	2007
January	2	2	0	0	11	0	0
February	0	4	0	0	0	0	0
March	0	3	4	0	0	1	4
April	0	12	10	5	18	4	4
May	6	72	43	43	20	11	13
June	0	97	93	46	10	31	30
July	.....	59	107	73	23	27	17
August	.....	61	43	81	41	64	19
September	.....	66	27	59	10	29	26
October	.....	20	13	21	10	25	23
November	.....	12	3	4	8	47	7
December	.....	1	0	0	0	1	0
Total	.....	409	343	332	151	240	143

The vertical clearance of the vertical lift bridge is 5 feet above mean high water in the closed position and 64 feet above mean high water in the open position. In order to align the operating schedule with the observed marine traffic since 2007, the open on demand requirement for March 1 through April 30 and November 1 through November 30 is being revised such that the draw shall open with a 4 hour advance notice.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 60 days and no comments were received therefore no changes were made.

Under this rule, if vessels require an opening during any time of the year outside the summer and fall season (May through October) or between the hours of 11 p.m. and 7 a.m., the bridge will open with a 4 hour advanced notice. The impact to vessels of the proposed change to the regulation is that vessels which require openings during March, April or November will need to provide 4 hours advanced notice.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Fewer than 20 vessels per year based on NJDOT bridge tender logs will be impacted by this change. This regulation change should not have an adverse effect on their transit because the bridge is able to open if the mariner provides at least 4 hours of advance notice.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations

that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule amends the months of the year that the draw opens on signal when it is documented that vessel traffic is low. Additionally, vessels may still request an opening with 4 hours advanced notice during the months of March, April and November.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.729(b) to read as follows:

§ 117.729 Mantua Creek.

* * * * *

(b) The draw of the S.R. 44 bridge, mile 1.7, at Paulsboro, shall open on signal from May 1 through October 31 from 7 a.m. to 11 p.m., and shall open on signal at all other times upon four hours notice.

Dated: July 17, 2014.

Stephen P. Metruck,

Rear Admiral, United States Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 2014–18278 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0711]

RIN 1625–AA09

Drawbridge Operation Regulation; Raccoon Creek, Bridgeport, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the U.S. Route 130 lift bridge over Raccoon Creek at mile marker 1.8 in Bridgeport, NJ. The new rule will change the time of year that the bridge opens on signal. For the months that no longer open on signal, the bridge will open with four hours advanced notice.

DATES: This rule is effective September 2, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0711. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mrs. Jessica Shea, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757–398–6422, email *jessica.c.shea2@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
NJDOT New Jersey Department of Transportation
§ Section Symbol
U.S.C. United States Code

A. Regulatory History and Information

On October 28, 2013, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Raccoon Creek, Bridgeport, NJ in the **Federal Register** (78 FR 64189). We received two comments on the proposed rule. On May 29, 2014, we published a notice to reopen the comment period in the **Federal Register** (79 FR 30781). No comments were made in response to the May 29, 2014 notice. No public meeting was requested, and none was held.

B. Basis and Purpose

The bridge owner, NJDOT, requested a change in the operation regulation for the U.S. Route 130 bridge, mile 1.8, across Raccoon Creek. The majority of vessels that use this waterway are recreational boats that travel during the summer and fall months of May through October. The current operating schedule requires openings on signal from 7 a.m. to 11 p.m. between the months of March through November and a 4 hour advance notice at all other times. NJDOT provided the Coast Guard with the bridge tender logs to illustrate the marine traffic patterns on Raccoon Creek. Based on the information provided by the bridge tenders, there have been very few requests requiring openings between March 1 through April 30 and November 1 through November 30 during the 7 a.m. to 11 p.m. time period. (See Table A)

TABLE A—BRIDGE OPENINGS FOR JANUARY 2007–JUNE 2013

Month	2013	2012	2011	2010	2009	2008	2007
January	8	0	0	2	0	2	0
February	8	0	0	1	0	0	0
March	7	0	0	5	0	0	0
April	22	5	0	10	15	13	2
May	39	12	13	33	14	20	17
June	52	27	33	42	33	38	40
July		36	19	30	81	49	65
August		27	14	21	59	38	57
September		34	8	31	59	45	56
October		12	12	4	26	17	10
November		8	14	1	2	10	1
December		1	4	0	6	0	2
Total		162	117	180	295	232	250

The vertical clearance of the vertical lift bridge is 5 feet above mean high water in the closed position and 64 feet above mean high water in the open position. In order to align the operating schedule with the observed marine traffic, this rule changes the open on demand requirement for March 1 through April 30 and November 1 through November 30 to require a 4 hour advance notice.

C. Discussion of Comments, Changes and the Final Rule

Two comments were made in response to the Notice of Proposed Rulemaking published on October 28, 2013 (78 FR 64189). These comments were posted to the Docket USCG–2013–0711. The first comment was regarding the rationale behind the proposed change. The second comment was regarding the history of marine transits on the waterway during the month of April. We addressed both of these comments in the notice that was published in the **Federal Register** on May 29, 2014 (79 FR 30781). The Coast Guard did not change the proposed regulation in response to either of the comments.

Under this rule, if vessels require an opening during any time of the year outside the summer and fall season (May through October) or between the hours of 11 p.m. and 7 a.m., the bridge will open with a 4 hour advanced notice. The impact to vessels of the proposed change to the regulation is that vessels which require openings

during March, April or November will need to provide 4 hours advanced notice.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The impact to vessels of this regulation is that vessels which require openings during March, April, or November will need to provide 4 hours advanced notice. Based on the average logged openings during 2007–2013 during the months of March, April and November, the bridge tender logs indicate that fewer than 20 vessels annually require openings in those months. This regulation change should not have an adverse effect on their transit because the bridge is able to open if the mariner provides at least 4 hours of advance notice.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The Coast Guard received a comment from a marina owner on Raccoon Creek regarding the month of April. The modification to the operating schedule for the Route 130 bridge over Raccoon Creek will not significantly impact the marina because vessels may still request an opening from the bridge during the month of April with four hours notice. The regulatory text remains unchanged from the Notice of Proposed Rulemaking.

Furthermore, this rule amends the months of the year when the draw must open on signal when it is documented that vessel traffic is low. Vessels may still transit the bridge by requesting an opening with 4 hours advanced notice during the months of March, April, and November.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.741(a) to read as follows:

§ 117.741 Raccoon Creek.

(a) The draw of the Route 130 highway bridge, mile 1.8 at Bridgeport, shall open on signal:

(1) May 1 through October 31, from 7 a.m. to 11 p.m.

(2) At all other times, if at least four hours notice is given.

* * * * *

Dated: July 17, 2014.

Stephen P. Metruck,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2014–18282 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0427]

RIN 1625–AA00

Safety Zone; Gay Games 9 Triathlon, North Coast Harbor, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of North Coast Harbor, Cleveland, OH. This safety zone is intended to restrict vessels from a portion of North Coast Harbor during the Gay Games 9 Triathlon. This temporary safety zone is necessary to protect participants, spectators, and vessels from the navigational hazards associated with a large swimming event.

DATES: This rule will be effective from 5:45 a.m. until 10:15 a.m. on August 10, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0427]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9573, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a large scale swimming event on a navigable waterway, which is discussed further below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

Between 5:45 a.m. and 10:15 a.m. on August 10, 2014, a swimming event will be held on North Coast Harbor in Cleveland, OH. The Captain of the Port Buffalo has determined that large scale swimming event on a navigable waterway will pose a significant risk to participants and the boating public. The purpose of the safety zone is to protect spectators and vessels from the hazards associated with a large scale swimming event on a navigable waterway.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during

the Gay Games 9 Triathlon. This zone will be effective and enforced from 5:45 a.m. until 10:15 a.m. on August 10, 2014. This zone will encompass all waters of North Coast Harbor, Cleveland, OH within the following positions: 41°30′37.21″ N and 081°41′43.88″ W, the East to 41°30′38.66″ N and 081°41′38.95″ W then Northwest to 41°30′41.63″ N and 081°41′43.59″ W then Southwest to 41°30′37.21″ N and 081°41′43.88″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of North Coast Harbor on the morning of August 10, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone would be activated, and thus subject to enforcement, for only 4 hours early in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order

13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–0427 is added to read as follows:

§ 165.T09–0427 Safety Zone; Gay Games 9 Triathlon, North Coast Harbor, Cleveland, OH.

(a) *Location.* This zone will encompass all waters of North Coast Harbor, Cleveland, OH within the following positions: 41°30′37.21″ N and 081°41′43.88″ W, the East to 41°30′38.66″ N and 081°41′38.95″ W then Northwest to 41°30′41.63″ N and 081°41′43.59″ W then Southwest to 41°30′37.21″ N and 081°41′43.88″ W (NAD 83).

(b) *Effective and enforcement Period.* This regulation is effective and will be enforced on August 10, 2014 from 5:45 a.m. until 10:15 a.m.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: July 22, 2014.

B.W. Roche,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2014–18284 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 121

Revised Service Standards for Market-Dominant Mail Products; Designation of Implementation Date

AGENCY: Postal Service™.

ACTION: Final rule; designation of implementation date.

SUMMARY: This document identifies the implementation date for the revised service standards for market-dominant mail products associated with the second phase of the Network Rationalization initiative, and makes conforming changes to the applicable regulations.

DATES: *Effective Date:* August 1, 2014.

FOR FURTHER INFORMATION CONTACT: Dave Williams, Network Operations, at 202–268–4305.

SUPPLEMENTARY INFORMATION:

On September 21, 2011, the Postal Service published an advance notice of proposed rulemaking (the Advance Notice) in the **Federal Register** to solicit public comment on a conceptual proposal to revise service standards for market-dominant products.[1] After considering comments received in response to the Advance Notice, the Postal Service decided to develop the concept into a concrete proposal, identified as Network Rationalization. The basic logic of Network Rationalization is that falling mail volumes and the resultant excess capacity in the Postal Service's mail processing network necessitate a major consolidation of the network, and this task in turn is contingent on revisions to service standards, particularly the overnight standard for First-Class Mail.

On December 5, 2011, the Postal Service submitted a request to the Postal Regulatory Commission (PRC) for an advisory opinion on the service changes associated with Network Rationalization, in accordance with 39 U.S.C. 3661(b).[2] On December 15, 2011, the Postal Service published proposed revisions to its market-dominant service standards in the **Federal Register** and sought public comment (the Proposed Rulemaking).[3] The comment period for the Proposed Rulemaking closed on February 13, 2012. The final rule was published on May 25, 2012.[4]

Having considered public input and the results of its market research, the Postal Service decided to implement Network Rationalization in a phased manner. The service standard changes

[1] Proposal to Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail, 76 FR 58433 (September 21, 2011).

[2] PRC Docket No. N2012–1, Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services (December 5, 2011). Documents pertaining to the Request are available at the PRC Web site, *http://www.prc.gov.*

[3] Service Standards for Market-Dominant Mail Products, 76 FR 77942 (December 15, 2011).

[4] Revised Service Standards for Market-Dominant Mail Products, 77 FR 31190 (May 25, 2012).

associated with the first phase of Network Rationalization became effective on July 1, 2012.[5] In a **Federal Register** notice dated January 24, 2014, the Postal Service announced its decision to postpone implementation of the second phase of Network Rationalization, and to identify the implementation date for the second phase at least 90 days before it takes effect.[6] This document identifies the implementation date for the second phase of Network Rationalization, and the corresponding service standard changes.

The Postal Service's market-dominant service standards are contained in 39 CFR part 121. This document revises the service standards by identifying the implementation date for the service standards associated with the second phase of Network Rationalization, and by modifying 39 CFR 121.1(b)(2) to clarify that the 2-day service standard for First-Class Mail includes intra-SCF single piece First-Class Mail.[7] The revision concerning the second phase implementation date is applied by replacing ''the effective date identified by the Postal Service in a future **Federal Register** document'' with ''January 5, 2015'' each place where ''the effective date identified by the Postal Service in a future **Federal Register** document'' appears in the current version of 39 CFR part 121, and in Appendix A to that part. The 2-day service standard for First-Class Mail is clarified through the addition of a reference to ''intra-SCF single piece domestic First-Class Mail properly accepted before the day-zer0–CET'' in paragraph 121.1(b)(2). In addition, conforming non-substantive edits were made.

List of Subjects in 39 CFR Part 121

Administrative practice and procedure, Postal Service.

Accordingly, for the reasons stated in the preamble, the Postal Service adopts the following revisions to 39 CFR part 121:

[5] *Id.*

[6] Revised Service Standards for Market-Dominant Mail Products; Postponement of Implementation Date, 79 FR 4079 (January 24, 2014).

[7] Application of the two-day service standard to intra-SCF single piece domestic First-Class Mail was described in previous **Federal Register** notices. *See* Proposal to Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail, 76 FR 58433 (September 21, 2011); Service Standards for Market-Dominant Mail Products, 76 FR 77942 (December 15, 2011).

PART 121—SERVICE STANDARDS FOR MARKET DOMINANT MAIL PRODUCTS

■ 1. The authority citation for 39 CFR part 121 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

■ 2. Section 121.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 121.1 First-Class Mail.

(a)(1) Until January 5, 2015, a 1-day (overnight) service standard is applied to intra-Sectional Center Facility (SCF) domestic First-Class Mail® pieces properly accepted before the day-zero Critical Entry Time (CET), except for mail between Puerto Rico and the U.S. Virgin Islands, mail between American Samoa and Hawaii, and mail destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(2) On and after January 5, 2015, a 1-day (overnight) service standard is applied to intra-SCF domestic Presort First-Class Mail pieces properly accepted at the SCF before the day-zero CET, except for mail between Puerto Rico and the U.S. Virgin Islands, and mail destined to American Samoa and the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(b)(1) Until January 5, 2015, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin Processing & Distribution Center or Facility (P&DC/F) and destination Area Distribution Center (ADC) is 6 hours or less; or if the origin and destination are separately in Puerto Rico and the U.S. Virgin Islands; or if the origin or destination is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(2) On and after January 5, 2015, a 2-day service standard is applied to intra-SCF single piece domestic First-Class Mail properly accepted before the day-zero CET, inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin P&DC/F and destination SCF is 6 hours or less, Presort First-Class Mail properly accepted before the day-zero CET with an origin and destination that are separately in Puerto Rico and the U.S. Virgin Islands, and intra-SCF Presort First-Class Mail properly accepted before the day-zero CET with an origin or destination that is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

* * * * *

■ 3. Section 121.2 is amended by revising paragraph (a)(1) to read as follows:

§ 121.2 Periodicals.

(a) *End-to-End.*

(1)(i) Until January 5, 2015, a 2- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero Critical Entry Time (CET) and merged with First-Class Mail pieces for surface transportation (as per the Domestic Mail Manual (DMM)), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;

(ii) On and after January 5, 2015, a 3- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation (as per the DMM), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard.

* * * * *

■ 4. Appendix A to Part 121 is amended by revising the introductory text of Tables 1 through 4 to read as follows:

Appendix A to Part 121—Tables Depicting Service Standard Day Ranges

* * * * *

Table 1. Prior to January 5, 2015, end-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

* * * * *

Table 2. On and after January 5, 2015, end-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

* * * * *

Table 3. Prior to January 5, 2015, end-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

* * * * *

Table 4. On and after January 5, 2015, end-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

* * * * *

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–18223 Filed 7–31–14; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6059–N]

Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of the Extended Temporary Moratoria on Enrollment of Ambulance Suppliers and Home Health Agencies in Designated Geographic Locations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Extension of temporary moratoria.

SUMMARY: This document announces the extension of temporary moratoria on the enrollment of new ambulance suppliers and home health agencies (HHAs) in specific locations within designated metropolitan areas in Florida, Illinois, Michigan, Texas, Pennsylvania, and New Jersey to prevent and combat fraud, waste, and abuse.

DATES: *Effective Date:* July 29, 2014.

FOR FURTHER INFORMATION CONTACT: August Nemec, (410) 786–0612.

News media representatives must contact CMS' Public Affairs Office at (202) 690–6145 or email them at *press@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. CMS' Imposition of Temporary Enrollment Moratoria

Section 6401(a) of the Affordable Care Act added a new section 1866(j)(7) to the Social Security Act (the Act) to provide the Secretary with authority to impose a temporary moratorium on the enrollment of new Medicare, Medicaid or CHIP providers and suppliers, including categories of providers and suppliers, if the Secretary determines a moratorium is necessary to prevent or combat fraud, waste, or abuse under these programs. For a more detailed explanation of these authorities, please see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 extension and establishment of a temporary moratoria document (hereinafter referred to as the February 4, 2014 moratoria document) (79 FR 6475).

Based on this authority and our regulations at § 424.570, we have implemented two phases of the moratoria to date. In the notice issued on July 31, 2013 (78 FR 46339), we imposed moratoria on the enrollment of home health agencies in Miami-Dade County, Florida and Cook County, Illinois and surrounding counties and on the enrollment of ground ambulance suppliers in the Harris County, Texas area and surrounding counties. Then, in the document published on February 4, 2014 (79 FR 6475), we imposed moratoria on the enrollment of home health agencies in Broward County, Florida, Dallas County, Texas and Wayne County, Michigan and surrounding counties and on the enrollment of ground ambulance suppliers in Philadelphia, PA and surrounding counties.

B. Determination of the Need for Extending a Moratorium

In extending these enrollment moratoria, CMS considered both qualitative and quantitative factors suggesting a high risk of fraud, waste, or abuse. CMS relied on law enforcement's longstanding experience with ongoing and emerging fraud trends and activities through civil, criminal, and administrative investigations and prosecutions. CMS' determination of a high risk of fraud, waste, or abuse in these provider and supplier types within these geographic locations was then confirmed by CMS' data analysis, which relied on factors the agency identified as strong indicators of risk. (For a more detailed explanation of this determination process and of these authorities, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475)).

1. Consultation With Law Enforcement

In consultation with the HHS–OIG and the Department of Justice (DOJ), CMS identified two provider and supplier types in nine geographic locations that warrant a temporary enrollment moratorium. For a more detailed discussion of this consultation process, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475).

2. Beneficiary Access to Care

Beneficiary access to care in Medicare, Medicaid, and CHIP is of critical importance to CMS and its state partners, and CMS carefully evaluated access for the target moratorium locations. Prior to imposing and extending these moratoria, CMS consulted with the appropriate State Medicaid Agencies and with the appropriate State Department of Emergency Medical Services to determine if the moratoria would create an access to care issue for Medicaid and CHIP beneficiaries in the targeted locations and surrounding counties. All of CMS' state partners were supportive of CMS analysis and proposals, and together with CMS, determined that these moratoria will not create access to care issues for Medicaid or CHIP beneficiaries. CMS also reviewed Medicare data for these areas and found there are no current problems with access to HHAs or ground ambulance suppliers.

3. Lifting a Temporary Moratorium

In accordance with § 424.570(b), a temporary enrollment moratorium imposed by CMS will remain in effect for 6 months. (For a more detailed explanation of how CMS can lift a temporary moratorium, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475).) If CMS deems it necessary, the moratorium may be extended in 6-month increments. CMS will evaluate whether to extend or lift the moratorium before any subsequent moratorium periods. If one or more of the moratoria announced in this document are extended or lifted, CMS will publish a document to that effect in the **Federal Register**.

Once a moratorium is lifted, the provider or supplier types that were unable to enroll because of the moratorium will be designated to CMS' high screening level under § 424.518(c)(3)(iii) and § 455.450(e)(2) for 6 months from the date the moratorium was lifted.

II. Extension of Home Health and Ambulance Moratoria—Geographic Locations

As noted earlier, we previously imposed moratoria on the enrollment of new HHAs in Broward county, Miami-Dade and Monroe and their surrounding counties in Florida, the Illinois counties of Cook, DuPage, Kane, Lake, McHenry, and Will, the Michigan counties of Macomb, Monroe, Oakland Washtenaw, and Wayne and the Texas counties of Brazoria, Chambers, Collin, Fort Bend, Galveston, Dallas, Harris, Liberty, Denton, Ellis, Kauffman, Montgomery, Rockwall, Tarrant, and Waller. Further, we previously imposed moratoria on the enrollment of new ground ambulance suppliers in the Texas Counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller and the Pennsylvania counties of Bucks, Delaware, Montgomery; and Philadelphia and the New Jersey counties of Burlington, Camden, and Gloucester. These moratoria became effective upon publication in the **Federal Register** of a notice on July 31, 2013 (78 FR 46340)

and a moratoria document on February 4, 2014 (79 FR 6475).

In accordance with § 424.570(b), CMS may deem it necessary to extend previously-imposed moratoria in 6-month increments. Under its authority at § 424.570(b), CMS is extending the temporary moratoria on the Medicare enrollment of HHAs and ground ambulance suppliers in the geographic locations discussed herein. Under regulations at § 455.470 and § 457.990, these moratoria also apply to the enrollment of HHAs and ground ambulance suppliers in Medicaid and CHIP. Under § 424.570(b), CMS is required to publish a document in the **Federal Register** announcing any extension of a moratorium, and this extension of moratoria document fulfills that requirement.

CMS consulted with both the HHS–OIG and DOJ regarding the extension of the moratoria on new HHAs and ground ambulance suppliers in all of the moratoria counties, and both HHS–OIG and DOJ agree that a significant potential for fraud, waste, and abuse continues to exist in these geographic areas. The circumstances warranting the imposition of the moratoria have not yet abated, and CMS has determined that the moratoria are still needed as we monitor the indicators and continue with administrative actions such as payment suspensions and revocations of provider/supplier numbers. (For more information regarding the monitored indicators, see section I.B. of the February 4, 2014 moratoria document (79 FR 6475).)

Based upon CMS' consultation with the relevant State Medicaid Agencies, CMS has concluded that extending these moratoria will not create an access to care issue for Medicaid or CHIP beneficiaries in the affected counties at this time. CMS also reviewed Medicare data for these areas and found there are no current problems with access to HHAs or ground ambulance suppliers. Nevertheless, the agency will continue to monitor these locations to ensure that no access to care issues arise in the future.

Based upon our consultation with law enforcement and consideration of the factors and activities described previously, CMS has determined that the temporary enrollment moratoria should be extended for an additional 6 months.

III. Summary of the Moratoria Locations

CMS is executing its authority under sections 1866(j)(7), 1902(kk)(4), and 2107(e)(1)(D) of the Act to extend these moratoria in the following counties for these providers and suppliers:

TABLE 1—HHA MORATORIA

State	City/metro area	Counties
FL	Fort Lauderdale	Broward.
FL	Miami	Monroe.
		Dade.
IL	Chicago	Cook.
		DuPage.
		Kane.
		Lake.
		McHenry.
		Will.
MI	Detroit	Macomb.
		Monroe.
		Oakland.
		Washtenaw.
		Wayne.
TX	Dallas	Collin.
		Dallas.
		Denton.
		Ellis.
		Kaufman.
		Rockwall.
		Tarrant.
TX	Houston	Brazoria.
		Chambers.
		Fort Bend.
		Galveston.
		Harris.
		Liberty.
		Montgomery.
		Waller.

TABLE 2—PART B AMBULANCE MORATORIA

State	City/metro area	Counties
PA/NJ	Philadelphia	Bucks.
		Burlington (NJ).
		Camden (NJ).
		Delaware.
		Gloucester (NJ).
		Montgomery.
		Philadelphia.
TX	Houston	Brazoria.
		Chambers.
		Fort Bend.
		Galveston.
		Harris.
		Liberty.
		Montgomery.
		Waller.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Regulatory Impact Statement

CMS has examined the impact of this document as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major regulatory actions with economically significant effects ($100 million or more in any 1 year). This document will prevent the enrollment of new home health providers and ambulance suppliers in Medicare, and new home health providers and ambulance suppliers in Medicaid and CHIP. Though savings may accrue by denying enrollments, the monetary amount cannot be quantified. After the imposition of the moratoria on July 30, 2013, 231 HHAs and 7 ambulance companies in all geographic areas affected by the moratoria had their applications denied. We have found the number of applications that are denied after 60 days declines dramatically, as most providers and suppliers will not submit applications during the moratoria period. Therefore, this document does not reach the economic threshold and thus is not considered a major action.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $35.5 million in any one year. Individuals and states are not included in the definition of a small entity. CMS is not preparing an analysis for the RFA because it has determined, and the Secretary certifies, that this document will not have a significant

economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if an action may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS defines a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. CMS is not preparing an analysis for section 1102(b) of the Act because it has determined, and the Secretary certifies, that this document will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any regulatory action whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This document will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed regulatory action (and subsequent final action) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this document does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this document.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35; Sec. 1103 of the Social Security Act (42 U.S.C. 1302).

Dated: July 2, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–18174 Filed 7–29–14; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding Source(s)	Location of Referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Schuylkill County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1145			
Good Spring Creek	Approximately 1,580 feet upstream of Locust Street	+810	Township of Frailey.
	Approximately 977 feet upstream of Spruce Street	+815	
Little Schuylkill River	Approximately 1,750 feet downstream of the State Route 895 bridge.	+548	Township of East Brunswick.
	At the upstream side of the railroad bridge	+560	
Mahanoy Creek	Approximately 0.71 mile upstream of Rice Road	+781	Township of Butler.
	Approximately 560 feet upstream of the railroad bridge	+811	
Schuylkill River	Approximately 1,349 feet upstream of Mount Carbon Arch Road.	+594	Borough of Mechanicsville, Borough of Palo Alto.
	Approximately 100 feet upstream of Coal Street	+631	
Schuylkill River	An area bound by a point approximately 31 feet south of State Route 209; a point approximately 618 feet south of State Route 209; and a point approximately 639 feet southwest of State Route 209.	+722	Borough of Middleport.
Schuylkill River	An area bound by a point approximately 475 feet northwest of State Route 209; a point approximately 472 feet northeast of State Route 209; and a point approximately 367 feet south of State Route 209.	+733	Borough of Middleport.
Schuylkill River	Approximately 0.5 mile downstream of Franklin Street	+747	Township of Schuylkill.
	Approximately 0.4 mile downstream of Franklin Street	+748	
West Branch Schuylkill River	Approximately 1,582 feet upstream of East Sunbury Street.	+702	Township of Branch, Township of New Castle, Township of Norwegian.
	Approximately 169 feet upstream of the intersection of Greenbury Road and State Route 4002.	+848	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Borough of Mechanicsville
Maps are available for inspection at the Mechanicsville Borough Hall, 1342 Pottsville Street, Pottsville, PA 17901.

Borough of Middleport
Maps are available for inspection at the Borough Hall, 27 Washington Street, Middleport, PA 17953.

Borough of Palo Alto
Maps are available for inspection at the Borough Hall, 142 East Bacon Street, Palo Alto, PA 17901.

Township of Branch
Maps are available for inspection at the Branch Township Municipal Building, 25 Carnish Street, Pottsville, PA 17901.

Township of Butler
Maps are available for inspection at the Butler Township Municipal Building, 211 Broad Street, Ashland, PA 17921.

Township of East Brunswick
Maps are available for inspection at the East Brunswick Township Municipal Building, 55 West Catawissa Street, New Ringgold, PA 17960.

Township of Frailey
Maps are available for inspection at the Frailey Township Municipal Building, 23 Maryland Street, Donaldson, PA 17981.

Township of New Castle
Maps are available for inspection at the New Castle Township Municipal Building, 248–250 Broad Street, Saint Clair, PA 17970.

Township of Norwegian
Maps are available for inspection at the Norwegian Township Municipal Building, 506 Maple Avenue, Mar Lin, PA 17951.

Township of Schuylkill
Maps are available for inspection at the Schuylkill Township Municipal Building, 675 Walnut Street, Mary-D, PA 17952.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18251 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL) Modified	Communities affected
Oceana County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1221			
Lake Michigan	Entire shoreline within community	+584	Township of Golden.
Lake Michigan	Entire shoreline within community	+585	Township of Benona, Township of Claybanks.
Pentwater Lake	Entire shoreline	+584	Township of Weare.

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
^Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Benona

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at Benona Township Hall, 7169 West Baker Road, Shelby, MI 49455.

Township of Claybanks

Maps are available for inspection at Claybanks Township Hall, 7577 West Cleveland Road, New Era, MI 49446.

Township of Golden

Maps are available for inspection at Golden Township Hall, 5527 West Fox Road, Mears, MI 49436.

Township of Weare

Maps are available for inspection at Weare Township Hall, 6506 North Oceana Drive, Hart, MI 49420.

Town of Richmond, Vermont Docket No.: FEMA–B–1226			
Winooski River	Approximately 0.8 mile downstream of I–89 Approximately 1,150 feet upstream of Cochran Road.	+303 +326	Town of Richmond.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Richmond

Maps are available for inspection at the Town Center Building, 203 Bridge Street, Richmond, VT 05477.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Date: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18254 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Effective Modified	Communities affected
Montgomery County, Texas, and Incorporated Areas Docket No.: FEMA–B–1045 and B 1221			
Alligator Creek Flooding Effects, its West Branch and its West Fork.	At the confluence of West Fork of San Jacinto River and Alligator Creek.	+133	City of Conroe, Unincorporated Areas of Montgomery County.
	Approximately 375 feet upstream of Hillcrest Road	+195	
	Approximately 650 feet upstream of Hillcrest Road	+215	
	Just upstream of State Highway 336 and Alligator Creek	+238	
Arnold Branch	Approximately 1.4 miles downstream of FM 1488	+219	Town of Magnolia.
	Approximately 1,475 feet upstream of FM 1488	+246	
Arnold Branch Flooding Effects.	At the confluence of Mink Branch and Arnold Branch	+203	Unincorporated Areas of Montgomery County.
	Approximately 800 feet downstream of Grand Oaks Boulevard.	+214	
	Approximately 2,100 feet upstream of Nichols Sawmill Road.	+227	
	Approximately 2.34 miles downstream of Doodson Road	+246	
Bear Branch Flooding Effects.	Approximately 2,500 feet downstream of Sawdust Road	+117	Unincorporated Areas of Montgomery County.
	Just downstream of Woodlands Parkway	+123	
	At the confluence of Panther Branch and Bear Branch	+140	
	Approximately 100 feet downstream from Kuykendahl Road	+157	
Bee Branch Flooding Effects.	Approximately 1.1 miles upstream of the confluence with Jayhawker Creek and Bee Branch.	+129	Unincorporated Areas of Montgomery County.
	Just upstream of Fostoria Road	+142	
Bens Branch	Approximately 620 feet downstream from the Loop 494	+79	Unincorporated Areas of Montgomery County.
	Just downstream of Loop 494	+80	
Brushy Creek Flooding Effects.	At the confluence of Spring Creek and Brushy Creek	+187	Unincorporated Areas of Montgomery County.
	Approximately 4,550 feet upstream from the confluence of Threemile Creek and Brushy Creek.	+214	
Camp Creek Flooding Effects and its Tributaries.	Just upstream of Rogers Road	+306	City of Willis, Unincorporated Areas of Montgomery County.
	Just upstream of African Hill Road	+337	
Caney Creek Flooding Effects	At the confluence of Peach Creek and Caney Creek	+70	City of Cut 'N Shoot, Unincorporated Areas of Montgomery County.
	At the confluence of McRae Creek and Caney Creek	+183	
	Approximately 6,500 feet upstream of Bilnoski Road	+268	
	Approximately 9,000 feet upstream of Mt. Zion Road	+282	
	Approximately 15,500 feet upstream of confluence with Caney Creek.	+285	
Caney Creek North Flooding Effects.	At the confluence of Caney Creek Tributary No. 4 and Caney Creek North.	+202	Unincorporated Areas of Montgomery County.
	At the confluence of Kelly Branch and Caney Creek North	+220	
Carters Slough Flooding Effects.	At the confluence of West Fork of San Jacinto River and Carters Slough.	+108	Unincorporated Areas of Montgomery County.
	Just upstream of unnamed Railroad and Carters Slough	+124	
Crystal Creek Flooding Effects.	At the confluence of West Fork of San Jacinto River and Crystal Creek.	+109	City of Conroe, City of Cut 'N Shoot, Unincorporated Areas of Montgomery County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Effective Modified	Communities affected
	At the confluence of West Fork of Crystal Creek and Crystal Creek.	+143	
	At the confluence of Crystal Creek Tributary No. 4 and Crystal Creek.	+193	
	At the confluence of Crystal Creek Tributary No. 7 and Crystal Creek.	+240	
	Approximately 0.5 miles upstream of State Highway 75	+307	
Decker Branch Flooding Effects and its Tributaries.	At the confluence of Mill Creek	+157	Unincorporated Areas of Montgomery County.
	Approximately 350 feet downstream from FM 1774 County Highway.	+208	
	Approximately 440 feet upstream from Tree Meadow Road.	+219	
Dry Creek Flooding Effects and its Tributaries.	At the confluence of Caney Creek and Dry Creek	+93	City of Conroe, Unincorporated Areas of Montgomery County.
	Just upstream of Massey Road and Dry Creek	+157	
Dry Creek No. 2, its Tributaries and Flooding Effects.	At the confluence of unnamed intermittent river	+195	Unincorporated Areas of Montgomery County.
	Approximately 190 feet downstream from Smith-Dobbin Road.	+214	
Duck Creek Flooding Effects.	At the confluence of Peach Creek and Duck Creek	+151	Unincorporated Areas of Montgomery County.
	Approximately 4,000 feet upstream of Duff Road	+191	
Goodson Branch Flooding Effects and its Tributaries.	At the confluence of Decker Branch Tributary No. 1 and Goodson Branch.	+188	Unincorporated Areas of Montgomery County.
	Approximately 176 feet downstream from Goodson Loop ...	+217	
Hightower Branch Flooding Effects.	At the confluence of Peach Creek and Hightower Branch ...	+120	Unincorporated Areas of Montgomery County.
	Approximately 9,800 feet upstream of the confluence with Peach Creek and Hightower Branch.	+135	
Jayhawker Creek Flooding Effects.	Approximately 4,000 feet upstream of the confluence with Bee Branch and Jayhawker Creek.	+128	Unincorporated Areas of Montgomery County.
	Approximately 7,300 feet upstream of unnamed Railroad ...	+147	
Lake Creek Flood Effects, its Tributaries and unnamed Streams.	At the confluence of West Fork of San Jacinto River and Lake Creek.	+133	Unincorporated Areas of Montgomery County.
	At the confluence of Lake Creek Tributary No. 2 and Lake Creek.	+152	
	At the confluence of Landrum Creek and Lake Creek	+195	
	Approximately 5,760 feet upstream of the confluence with Kidhaw Branch and Lake Creek.	+260	
Lawrence Creek Flooding Effects.	At the confluence of Peach Creek and Lawrence Creek	+146	Unincorporated Areas of Montgomery County.
	Approximately 1,500 feet downstream of Walker Road and Lawrence Creek.	+191	
Little Caney Creek No. 3 Flooding Effects.	Approximately 2,800 feet downstream from Mount Mariah Road.	+223	Unincorporated Areas of Montgomery County.
	Approximately 4,300 feet upstream of Mount Mariah Road.	+228	
Little Lake Creek Flooding Effects.	At the confluence of Little Lake Creek Tributary No. 6 and Little Lake Creek.	+202	Unincorporated Areas of Montgomery County.
	Just upstream of FM1097 County Highway	+305	
Mares Branch Flooding Effects.	At the confluence of Peach Creek and Mares Branch	+96	Unincorporated Areas of Montgomery County.
	Approximately 7,000 feet upstream of the confluence of Peach Creek and Mares Branch.	+98	
McRae Creek Flooding Effects.	At the confluence of Caney Creek and McRae Creek	+184	Unincorporated Areas of Montgomery County.
	Approximately 9,850 feet upstream of Tanyard Road	+335	
Mill Creek Flooding Effects and its Tributaries.	At the confluence of Spring Creek and Mill Creek	+156	Unincorporated Areas of Montgomery County.
	Just upstream of unnamed Railroad	+172	
	At the confluence of Tributary No. 2 and Mill Creek	+190	
	At the confluence of Mill Creek Tributary No. 6	+214	
Mink Branch Flooding Effects.	At the confluence of Walnut Creek and Mink Branch	+189	Unincorporated Areas of Montgomery County.
	At the confluence of Arnold Branch and Mink Branch	+203	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Effective Modified	Communities affected
	Approximately 1,500 feet downstream of Old Hempstead Road.	+249	
Orton Gully Flooding Effects.	At the confluence of East Fork of San Jacinto River and Orton Gully.	+72	Unincorporated Areas of Montgomery County.
	Approximately 750 feet upstream of Cambridge Boulevard.	+91	
Panther Branch Flooding Effects.	At the confluence of Spring Creek and Panther Branch	+108	City of Conroe, Town of Shenandoah, Unincorporated Areas of Montgomery County.
	Just upstream of Magnolia Conroe Road	+181	
	Just upstream of FM 1488 County Highway	+191	
Peach Creek	Approximately 1,375 feet downstream of Roman Forest Boulevard.	+85	Town of Roman Forest.
	Approximately 425 feet upstream of Roman Forest Boulevard.	+86	
Peach Creek Flooding Effects and its Tributaries.	At the confluence of Caney Creek and Peach Creek	+70	City of Splendora, Unincorporated Areas of Montgomery County, Village of Patton Village, Village of Woodbranch.
	Approximately 15,000 feet upstream of the confluence with Duck Creek and Peach Creek.	+164	
	Approximately 17,000 feet upstream of the confluence with Peach Creek Tributary No. 3 and Peach Creek.	+340	
	Approximately 16,500 feet upstream of the confluence with Peach Creek.	+367	
Pole Creek Flooding Effects.	At the confluence with Little Lake Creek and Pole Creek	+239	Unincorporated Areas of Montgomery County.
	Approximately 10,000 feet upstream of Martha Williams Road.	+297	
Sand Branch No. 2 Flooding Effects.	At the confluence with Little Lake Creek and Sand Branch No. 2.	+243	Unincorporated Areas of Montgomery County.
	Approximately 18,000 feet upstream of the confluence with Little Lake Creek and Sand Branch No. 2.	+314	
Silverdale Creek Flooding Effects.	At the confluence of West Fork of San Jacinto River and Silverdale Creek.	+126	City of Conroe, Unincorporated Areas of Montgomery County.
	Just upstream of Wagers Street	+187	
Spring Branch Flooding Effects.	At the confluence of Carney Creek and Spring Branch	+95	Unincorporated Areas of Montgomery County.
	Approximately 2,600 feet upstream of East Old Highway 105 Road.	+176	
Spring Branch No. 2 Flooding Effects.	Approximately 1,500 feet upstream from the confluence with Landrum Creek and Spring Branch No. 2.	+202	Unincorporated Areas of Montgomery County.
	Just upstream of Spring Branch Road	+264	
Spring Creek Flooding Effects into Sam Bell Gully Diversion Channel.	At the confluence of Spring Creek and Sam Bell Gully	+100	City of Oak Ridge North, Unincorporated Areas of Montgomery County.
	At the confluence of Sam Bell Gully Tributary Diversion Channel and Spring Creek.	+117	
	Approximately 1,150 feet upstream from Woodson Road	+136	
Spring Creek, its Tributaries, intermittent Streams and Flooding Effects for areas north of Spring Creek.	At the confluence of West Fork of San Jacinto River and Spring Creek.	+67	City of Houston, Unincorporated Areas of Montgomery County.
	At the confluence of Sam Bell Gully Diversion Channel and Spring Creek.	+100	
	At the confluence of Mill Creek and Spring Creek	+156	
	At the confluence of Walnut Creek and Spring Creek	+169	
Stewart Creek Flooding Effects.	Approximately 330 feet upstream of SH 336	+148	City of Conroe, City of Panorama Village, Unincorporated Areas of Montgomery County.
	At the confluence of Stewarts Creek Tributary No. 1 and Stewarts Creek.	+208	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Effective Modified	Communities affected
	Approximately 4,000 feet upstream of FM 830 County Highway.	+292	
Sulphur Branch Flooding Effects.	At the confluence of Walnut Creek and Sulphur Branch	+178	City of Stagecoach, Town of Magnolia, Unincorporated Areas of Montgomery County.
	Just upstream of Greek Oak Road	+218	
	Approximately 75 feet downstream from Magnolia Conroe Street.	+273	
Threemile Creek Flooding Effects.	At the confluence of Brushy Creek and Threemile Creek	+208	Unincorporated Areas of Montgomery County.
	Approximately 4,300 feet upstream from the confluence of Brushy Creek and Threemile Creek.	+211	
Walnut Creek Flooding Effects.	At the confluence of Spring Creek and Walnut Creek	+168	City of Stagecoach, Unincorporated Areas of Montgomery County.
	At the confluence of Mink Branch and Walnut Creek	+189	
	At the confluence of Log Gully and Walnut Creek	+195	
	Approximately 3,200 feet upstream from unnamed Tributary	+223	
West Fork of Spring Branch Flooding Effects.	At the confluence of Spring Branch and West Fork of Spring Branch.	+129	Unincorporated Areas of Montgomery County.
	Approximately 3,300 feet upstream of Pine Road	+191	
White Oak Creek Flooding Effects.	Approximately 20,000 feet downstream of unnamed Railroad.	+67	Unincorporated Areas of Montgomery County.
	Approximately 5,100 feet downstream of unnamed Railroad	+80	
Woodsons Gully Flooding Effects.	At the confluence of West Fork of San Jancinto River and Woodsons Gully.	+78	Unincorporated Areas of Montgomery County.
	Approximately 15,100 feet upstream of Riley Fuzzel Road.	+111	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Conroe
Maps are available for inspection at 300 West Davis, Conroe, TX 77301.

City of Cut 'N Shoot
Maps are available for inspection at 14391 East Highway 105, Cut 'N Shoot, TX 77303.

City of Houston
Maps are available for inspection at 611 Walker Road, Houston, TX 77002.

City of Oak Ridge North
Maps are available for inspection at 27326 Robinson Road, Suite 115, Conroe, TX 77385.

City of Panorama Village
Maps are available for inspection at 98 Hiwon Drive, Panorama Village, TX 77304.

City of Splendora
Maps are available for inspection at 16940 Main Street, Splendora, TX 77372.

City of Stagecoach
Maps are available for inspection at 16022 Westward Ho, Mongolia Texas, TX 77355.

City of Willis
Maps are available for inspection at 200 North Bell Street, Willis, TX 77378.

Town of Magnolia
Maps are available for inspection at 510 Magnolia Boulevard, Magnolia, TX 77356.

Town of Roman Forest
Maps are available for inspection at 2430 Roman Forest Boulevard, New Caney, TX 77357.

Town of Shenandoah
Maps are available for inspection at 29955 I–45 North, Shenandoah, TX 77381.

Unincorporated Areas of Montgomery County
Maps are available for inspection at 301 North Thompson, Suite 210, Conroe, TX 77301.

Village of Patton Village
Maps are available for inspection at 16940 Main Street, Splendora, TX 77372.

Village of Woodbranch
Maps are available for inspection at 58A Woodbranch Drive, New Caney, TX 77357.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18291 Filed 7–31–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0087;4500030113]

RIN 1018–AZ11

Endangered and Threatened Wildlife and Plants; Endangered Status for Physaria globosa (Short's Bladderpod), Helianthus verticillatus (Whorled sunflower), and Leavenworthia crassa (Fleshy-Fruit Gladecress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress). Short's bladderpod occurs in Indiana, Kentucky, and Tennessee. Whorled sunflower occurs in Alabama, Georgia, and Tennessee. Fleshy-fruit gladecress occurs only in Alabama. The effect of this regulation will be to add these species to the List of Endangered and Threatened Plants.

DATES: This rule is effective September 2, 2014.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/cookeville.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment during normal business hours at: U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481; facsimile 931–528–7075.

FOR FURTHER INFORMATION CONTACT: Mary E. Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, (see **ADDRESSES** above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This rule will finalize the listing of *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress) as endangered species.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that listing is warranted for these species, which are currently at risk throughout all of their respective ranges due to threats related to:

- For Short's bladderpod, potential future construction and ongoing maintenance of transportation rights-of-way; prolonged inundation and soil erosion due to flooding and water level manipulation; overstory shading due to forest succession and shading and competition from invasive, nonnative plant species; and small population sizes.
- For whorled sunflower, mechanical or chemical vegetation management for industrial forestry, right-of-way maintenance, or agriculture; shading and competition resulting from vegetation succession; limited distribution and small population sizes.
- For fleshy-fruit gladecress, loss of habitat due to residential and industrial development; conversion of agricultural sites for use as pasture; maintenance of road rights-of-way via mowing and herbicide treatment prior to seed production; shading due to natural forest succession; competition from invasive nonnative plants; off-road vehicles and dumping; limited distribution; and small sizes and limited genetic variation of some populations.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received during the comment period.

Previous Federal Action

Please refer to the proposed listing rule for Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress (78 FR 47109; August 2, 2013) for a detailed description of previous Federal actions concerning this species.

We will also be finalizing critical habitat designations for the Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress under the Act in the near future.

Summary of Comments and Recommendations

In the proposed rule published on August 2, 2013 (78 FR 47109), we requested that all interested parties submit written comments on the proposal by October 1, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Cherokee County Herald, The Birmingham News, and The Decatur Daily in Alabama; the Rome News Tribune in Georgia; The Posey County News in Indiana; the Lexington Herald-Leader and The State Journal in Kentucky; and the Jackson County Sentinel, The Tennessean, The Leaf Chronicle, Carthage Courier, and Hartsville Vidette in Tennessee. We did not receive any requests for a public hearing. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed in our responses to the comments below.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from 15 knowledgeable individuals with scientific expertise that included familiarity with one or more of these species and their habitats, biological needs, and threats. We received

responses from five of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress. The peer reviewers generally concurred with our methods and conclusions, and one of the peer reviewers provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) Comment: One peer reviewer informed us about preliminary results from a research project studying germination ecology of Short's bladderpod seeds, which has been initiated since the publication of the proposed rule. Preliminary results from this research indicate that seed viability is high in the population studied and that when pretreated with gibberellic acid, Short's bladderpod seeds germinate at greater proportions under conditions approximating mean diurnal temperatures that occur during late spring/early autumn and summer, versus those approximating conditions that occur during early spring/late autumn.

Our Response: We have incorporated this information in the Background section for Short's bladderpod.

(2) Comment: One peer reviewer brought to our attention a journal article (Ooi 2012) reporting results from research indicating that increasing summer temperatures could raise soil temperatures and increase loss of soil moisture in open habitats, which could accelerate loss of viable seeds from the soil because seedling mortality due to desiccation (drying out of a living organism) could increase following germination events. The reviewer suggested that this change could reduce the ability of species like Short's bladderpod to maintain soil seed banks, which provide resilience for populations to rebound from declines by recruiting new individuals when favorable conditions for germination and establishment are present.

Our Response: We agree and have incorporated this information into this rule in the Summary of the Biological Status and Threats for Short's bladderpod.

(3) Comment: One peer reviewer brought to our attention studies examining the influence of the species' mating system on genetic variation and structure in fleshy-fruit gladecress and on the potential for the species to hybridize with the closely related *Leavenworthia alabamica* (Koelling *et al.* 2011, Koelling and Mauricio 2010). The reviewer suggested that these data do not alter conclusions concerning the level of endangerment of fleshy-fruit gladecress, but that they are relevant to the analysis under Factor E.

Our Response: We concur and have incorporated this information into this rule in the Summary of the Biological Status and Threats for fleshy-fruit gladecress.

(4) Comment: One peer reviewer informed us of published data on germination phenology in fleshy-fruit gladecress (Caudle and Baskin 1968, p. 334) and a congener (an organism belonging to the same taxonomic genus as another organism), *Leavenworthia stylosa* (Baskin and Baskin 1972), which demonstrated the influence of ambient temperature on germination phenology in these species.

Our Response: We concur with the data and have incorporated the information into this rule in the Summary of the Biological Status and Threats for fleshy-fruit gladecress.

Public Comments

(5) Comment: Among other comments received, a comment from Plum Creek, a land and timber company, informed us that in April 2013 it acquired properties in Cherokee County, Alabama, and Floyd County, Georgia, where the whorled sunflower occurs. These properties were previously owned by The Campbell Group. Plum Creek acknowledged that the Coosa Valley Prairie property in Floyd County, Georgia, is protected by a conservation easement held by The Nature Conservancy, and expressed its intent to continue to manage that property under an adaptive management framework designed to benefit the natural community, including whorled sunflower. Plum Creek also expressed its intent to manage whorled sunflower where it occurs on their lands outside of the conservation easement.

Our Response: We have included this new information concerning ownership of the lands where two whorled sunflower populations are located into this rule. The Service appreciates Plum Creek's commitment to work with the conservation community to provide sound management for whorled sunflower and its habitat on the company's lands where the species occurs in Alabama and Georgia. The Service will work with Plum Creek and State conservation agencies in Alabama to develop a conservation agreement for the Alabama subpopulation located on Plum Creek lands.

Summary of Changes From Proposed Rule

The changes to this rule are limited to the addition of new information in the Background and Summary of Biological Status and Threats sections, which were brought to our attention by peer reviewers, the public, and the Tennessee Valley Authority (TVA) (see Background—Fleshy-fruit gladecress, below). The most substantive change is the addition of one known extant population of fleshy-fruit gladecress that was not reported in the proposed listing rule, which brings the total number of known extant occurrences of this species to seven. The existence of this additional occurrence, which is located in a TVA transmission line right-of-way and is potentially threatened by maintenance activities, does not change the determination reached in the proposed listing rule that fleshy-fruit gladecress should be listed as endangered.

Background

Short's Bladderpod

Physaria globosa is a member of the mustard family (Brassicaceae) known from Posey County, Indiana; Clark, Franklin, and Woodford Counties, Kentucky; and Cheatham, Davidson, Dickson, Jackson, Montgomery, Smith, and Trousdale Counties, Tennessee. Short's bladderpod typically grows on steep, rocky, wooded slopes and talus (sloping mass of rock fragments below a bluff or ledge) areas. It also occurs along tops, bases, and ledges of bluffs. The species usually is found in these habitats near rivers or streams and on south- to west-facing slopes. Most populations are closely associated with calcareous outcrops (Shea 1993, p. 16). The Short's bladderpod site in Indiana, where the species is found in a narrow strip of herbaceous vegetation between a road and forested bank of a cypress slough (M. Homoya, Natural Heritage Program Botanist, Indiana Department of Natural Resources, December 2012), is unique among populations of the species.

Short's bladderpod is an upright biennial or perennial (lives for 2 years or longer) with several stems, some branched at the base, reaching heights up to 50 centimeters (cm) (20 inches (in.)), and which are leafy to the base of the inflorescence (a group or cluster of flowers arranged on a stem that is composed of a main branch or a complicated arrangement of branches). Preliminary results from research at the Missouri Botanical Garden indicate that seed viability is high in one of the Tennessee populations they studied and

that seeds germinated at higher rates under greenhouse conditions approximating mean diurnal temperatures that occur during late spring/early autumn and summer, versus those approximating conditions that occur during early spring/late autumn. Further studies are under way to develop a protocol for propagating seedlings to reproductive maturity (M. Albrecht, Assistant Curator of Conservation Biology, Center for Conservation and Sustainable Development at Missouri Botanical Garden, September 30, 2013).

Whorled Sunflower

Helianthus verticillatus is a member of the sunflower family known from Cherokee County, Alabama; Floyd County, Georgia; and McNairy and Madison Counties, Tennessee. It is found in moist, prairie-like remnants, which in a more natural condition exist as openings in woodlands and adjacent to creeks. The Alabama and Georgia populations are located on flat to gently rolling uplands and along stream terraces in the headwaters of Mud Creek, a tributary to the Coosa River. In Tennessee, the Madison County population occurs along Turk Creek, a tributary to the South Fork Forked Deer River, and in adjacent uplands. The McNairy County population occurs along Prairie Branch, a headwater tributary to Muddy Creek in the Tuscumbia River drainage. It is a perennial arising from horizontal, tuberous-thickened roots with slender rhizomes. The stems are slender, erect, and up to 2 meters (m) (6 feet (ft)) tall. The leaves are opposite on the lower stem, verticillate (whorled) in groups of 3 to 4 at the mid-stem, and alternate or opposite in the inflorescence at the end. Individual leaves are firm in texture and have a prominent mid-vein, but lack prominent lateral veins found in many members of the genus. The flowers are arranged in a branched inflorescence typically consisting of 3 to 7 heads.

Fleshy-Fruit Gladecress

Fleshy-fruit gladecress is an annual, spring-flowering member of the mustard family (Brassicaceae) that is endemic to a 21-km (13-mi) radius area in north central Alabama (Rollins 1963, p. 63). It is a glabrous (morphological feature is smooth, glossy, having no trichomes (bristles or hair-like structures)) winter annual known from Lawrence and Morgan Counties, Alabama. It is a component of glade flora and occurs in association with limestone outcroppings. Populations of fleshy-fruit gladecress are now located in glade-like remnants exhibiting various degrees of disturbance, including pastures, roadside rights-of-way, and cultivated or plowed fields (Hilton 1997, p. 5). As with most of the cedar glade endemics, fleshy-fruit gladecress exhibits weedy tendencies, and it is not uncommon to find the species growing in altered habitats. It usually grows from 10 to 30 cm (4 to 12 in) tall. The leaves are mostly basal, forming a rosette, and entire to very deeply, pinnately (multiple leaflets attached in rows along a central stem) lobed or divided, to 8 cm (3.1 in) long. Flowers are on elongating stems, and the petals are approximately 0.8 to 1.5 cm (0.3 to 0.6 in.) long, obovate (ovate with the narrower end basal) to spatulate (having a broad, rounded end), and emarginate (notched at the tip).

The proposed listing rule reported that there were only six extant fleshy-fruit gladecress occurrences. After publication of the proposed rule, the TVA informed us of the existence of one additional occurrence that was discovered in 2008, but not included in the proposed listing rule. As a result, there are currently seven known extant occurrences of fleshy-fruit gladecress documented, three in Morgan and four in Lawrence Counties, Alabama. One of these occurs on U.S. Forest Service lands, where it is formally protected. The occurrence that TVA informed us about is located in a TVA transmission line right-of-way. A 1961 record from Lauderdale County has never been confirmed (McDaniel and Lyons 1987, p. 6).

Please refer to the proposed listing rule for Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress (78 FR 47109; August 2, 2013) for a summary of species information.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Short's Bladderpod

The most significant threats to Short's bladderpod were described in the proposed listing rule (78 FR 47109; August 2, 2013) under Listing Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Based on the Factor A analysis, we concluded that the loss and degradation of habitat represents the greatest threat to Short's bladderpod. The main causes for habitat loss and degradation are potential future construction and ongoing maintenance of transportation rights-of-way; prolonged inundation and soil erosion due to flooding and water level manipulation; and overstory shading due to forest succession and shading and competition from invasive, nonnative plant species.

Road construction has caused the loss of habitat and all Short's bladderpod plants at five occurrences, and roadside maintenance or road widening could adversely affect nearly 40 percent of the extant occurrences of the species due to their position in roadside habitats. Future development of a proposed commuter rail project to improve intercity commute options between the cities of Nashville and Clarksville, Tennessee (Nashville Area Metropolitan Planning Organization 2010, p. 98), could affect 27 percent of known extant occurrences, including some locations where the species is most abundant. Prolonged inundation and soil erosion due to flooding and water level fluctuations threaten 19 percent of extant Short's bladderpod occurrences, most notably the single Indiana occurrence, where the species has been present in large numbers but recently experienced a reduction in numbers due to prolonged flooding. The remaining occurrences threatened by prolonged inundation and soil erosion are located along reaches of the Cumberland River that are impounded by Army Corps of Engineers dam projects used for flood control and navigation. Overstory shading due to natural forest succession, combined with shading and competition due to invasive, nonnative shrubs and herbaceous species presents the most widespread, imminent threat to Short's bladderpod, and has been implicated in the loss of several historic occurrences. Due to these threats, which are expected to continue into the foreseeable future, the geographic range of Short's bladderpod has been reduced to 26 extant occurrences out of 55 that have been tracked by State conservation agencies.

The Factor E analysis in the proposed listing rule demonstrated that Short's bladderpod is vulnerable to adverse effects of small population size, including potential for reduced genetic variation, low numbers of compatible mates, increased likelihood of inbreeding depression, and reduced resilience to recover from acute demographic effects of other threats to the species and its habitat. Fewer than 100 plants have ever been observed at one time at 12 (46 percent) of the 26 extant occurrences, and many of these occurrences are distantly isolated from other occurrences. Existing threats may be exacerbated by the effects of ongoing and future climate change, especially projected increases in temperature and increased frequency and severity of droughts in the Southeast and projected increases in flooding in the Midwest. As noted above, increases in soil temperatures and soil moisture evaporation in response to predicted ambient warming could accelerate rates of soil seed bank depletion by increasing the seedling mortality rate (Ooi 2012, pp. S54–S55) and diminish the resilience of Short's bladderpod populations by reducing the species' ability to maintain soil seed banks.

A peer reviewer brought to our attention a publication by Ooi (2012, pp. S54–S55) indicating that increasing summer temperatures could raise soil temperatures in open habitats, which could lead to increased evaporation of soil moisture and potentially higher rates of seedling mortality following germination events. Given the species' preference for open-canopy habitats that are often located on south- to west-facing slopes where solar irradiance is high, we agree with the commenter that accelerated loss of viable seeds in the soil due to increasing soil temperatures could reduce the resilience of Short's bladderpod populations by reducing the suitability of the species' habitat for maintaining soil seed banks. A reduced ability to maintain soil seed banks would reduce the capacity for populations to rebound from declines, which could occur during periods of adverse environmental conditions such as drought or disturbance, by recruiting new individuals when favorable conditions for germination and recruitment are restored.

Based on our review of the best available scientific and commercial information, we conclude that adverse effects associated with small and often isolated populations, as described in the Factor E analysis, both alone and in conjunction with the widespread threats described under Factor A, constitute significant threats to Short's bladderpod.

Whorled Sunflower

The most significant threats to whorled sunflower were described in the proposed listing rule (78 FR 47109; August 2, 2013) under Listing Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Based on the Factor A analysis, we concluded that the loss and degradation of habitat represents the greatest threat to whorled sunflower. Past and ongoing risk of adverse effects from mechanical or chemical vegetation management for industrial forestry, right-of-way maintenance, or agriculture is a threat to three of the four extant populations of this species. Modification of the remnant prairie habitats that the species occupies due to shading and competition resulting from vegetation succession also threatens these three populations, limiting growth and reproductive output of whorled sunflower. These threats are expected to continue in the foreseeable future. A conservation easement and suitable habitat management currently alleviates these threats that otherwise would adversely affect the Georgia population.

The Factor E analysis in the proposed listing rule demonstrated that whorled sunflower is vulnerable to localized extinction because of its extremely restricted distribution and small population sizes at most known locations. There are only four extant populations, and a fifth historical population has not been observed at the species' type locality since its collection there in 1892. Small population size could be affecting reproductive fitness of whorled sunflower by limiting availability of compatible mates or by causing higher rates of inbreeding among closely related individuals. Both of these could be contributing to reduced achene production and viability rates, which limit the species' ability to recover from acute demographic effects of habitat loss or modification. The species' dependence on remnant prairie habitats, which are isolated on the landscape, limits the potential for recolonization in the event that localized extinction events occur.

Based on our review of the best available scientific and commercial information, we conclude that adverse effects associated with extremely restricted distribution and small and isolated populations, as described in the Factor E analysis, both alone and in conjunction with the threats described under Factor A, constitute significant threats to whorled sunflower.

Fleshy-Fruit Gladecress

The most significant threats to fleshy-fruit gladecress were described in the proposed listing rule (78 FR 47109; August 2, 2013) under Listing Factors A (the present or threatened destruction, modification, or curtailment of its habitat or range) and E (other natural or manmade factors affecting its continued existence). Based on the Factor A analysis, we concluded that the loss and degradation of habitat represents the greatest threat to fleshy-fruit gladecress. The species' geographic range has been reduced from 21 occurrences to 7 extant occurrences. The threats to the species from habitat destruction and modification are occurring throughout the entire range of the species. These threats include agricultural conversion from row-crop production to pasture, incompatible agricultural practices including poorly timed herbicide application or plowing, maintenance of transportation rights-of-way including mowing and herbicide treatment prior to seed set along roadsides, off-road vehicles, dumping, residential and industrial development, and shading and competition. In addition to these threats, the occurrence located in the TVA transmission line right-of-way could face threats associated with incompatible right-of-way maintenance, similar to those occurrences located in transportation rights-of-way. Converting row-crop fields to pastures eliminates periodic disturbance from plowing that, when well timed, arrests succession and creates favorable conditions for germination and seedling establishment.

Conservation efforts of the U.S. Forest Service have removed threats associated with off-road vehicle use and encroachment of invasive species at one site; however, maintenance of transportation or electrical transmission line rights-of-way and use of off-road vehicles could adversely affect the other six extant populations. Shading due to natural forest succession and competition from nonnative invasive plants presents a significant threat to fleshy-fruit gladecress, and has been implicated in the loss of five historic occurrences. One site, reported to be widely open in 1968, is now partially shaded due to closing of the canopy and the presence of nonnative plants, including *Ligustrum vulgare* (common privet) and *Lonicera maackii* (bush honeysuckle). These species are significant threats in many glades. These threats are expected to continue into the foreseeable future.

The Factor E analysis in the proposed listing rule demonstrated that fleshy-fruit gladecress is vulnerable to localized extinction because of the small number of occurrences and the small sizes of many of the extant populations within its limited range. Small population sizes could decrease the resilience of some fleshy-fruit gladecress occurrences to recover from effects of other threats affecting the species' habitat. There are only seven remaining fleshy-fruit gladecress occurrences, and only one of these is protected. The loss of any occurrences would significantly impact the species' viability by reducing its redundancy on the landscape, which would increase its vulnerability to stochastic environmental stressors and reduce the species' resilience to recover from effects of threats discussed in the above sections. The loss of any occurrences could significantly erode the species' overall genetic variation, given the high levels of structuring and apparent low levels of gene flow among populations (Koelling *et al.* 2011, pp. 315–316).

In addition to the threats discussed in the Factor E analysis in the proposed listing rule, data brought to our attention by a peer reviewer indicate that genetic variation is low in self-compatible populations of fleshy-fruit gladecress (Koelling *et al.,* pp. 315–316), which could limit their adaptive potential to respond to environmental change (Primack 1998, p. 283). Habitat disturbance or unintentional human movement resulting in contact between populations of fleshy-fruit gladecress and *Leavenworthia alabamica* could also present the threat of hybridization; though, at this time these species do not occur together in the wild and the potential for hybridization is reduced by incompatibility between them (Koelling and Mauricio 2010, pp. 417–419).

Based on our review of the best available scientific and commercial information, we conclude that adverse effects associated with limited distribution and small size and limited genetic variation of some populations, as described here and in the Factor E analysis in the proposed listing rule, both alone and in conjunction with the threats described under Factor A, constitute significant threats to fleshy-fruit gladecress.

Please refer to Summary of Factors Affecting the Species section of the proposed listing rule for a more detailed discussion of the factors affecting *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress). Our assessment evaluated the biological status of these species and threats affecting their continued existence. The assessment was based upon the best available scientific and commercial data.

Determination

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress are presently in danger of extinction throughout their entire ranges based on the severity and immediacy of threats currently impacting these species. The overall ranges of Short's bladderpod and fleshy-fruit gladecress have been significantly reduced, the range of whorled sunflower encompasses only four known populations, and the remaining habitat and populations of all three species are threatened by a variety of factors acting in combination to reduce their overall viability. The risk of extinction is high because the remaining populations are in many cases small, isolated, and have limited potential for recolonization. Therefore, on the basis of the best available scientific and commercial information, we are listing Short's bladderpod, whorled sunflower, and fleshy-fruit gladecress as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for these three plants because of their reduced and restricted ranges, because the threats are occurring rangewide and are not localized, and because the threats are ongoing and expected to continue into the future.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The threats to the survival of the species occur throughout their ranges and are not restricted to any particular significant portion of those ranges. Accordingly, our assessment and proposed determination applies to the species throughout their entire ranges.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outlines, draft recovery plans, and the final recovery plans will be available on our Web site (*http://www.fws.gov/endangered*), or from our Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and

outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Georgia, Indiana, and Tennessee and the Commonwealth of Kentucky will be eligible for Federal funds to implement management actions that promote the protection or recovery of Short's bladderpod and/or whorled sunflower. The State of Alabama has not entered into a cooperative agreement with the Service to establish eligibility for receiving Federal funds to implement management actions that promote the protection or recovery of plant species listed as threatened or endangered under the Act. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Army Corps of Engineers or U.S. Forest Service; issuance of section 10 Rivers and Harbors Act or section 404 Clean Water Act permits by the Army Corps of Engineers; herbicide registration by the Environmental Protection Agency; interstate pipeline construction or maintenance projects authorized by the Federal Energy Regulatory Commission; technical and financial assistance for projects provided by the Natural Resources Conservation Service; railway projects by the Federal Railroad Administration; and construction and maintenance of roads or highways by the Federal Highway Administration.

With respect to endangered plants, prohibitions outlined at 50 CFR 17.61 make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Exceptions to these prohibitions are outlined in 50 CFR 17.62.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, the Service may issue a permit authorizing any activity otherwise prohibited by 50 CFR 17.61 for scientific purposes or for enhancing the propagation or survival of endangered plants.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(2) Normal residential landscape activities.

Activities that the Service believes could potentially harm the Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress and result in ''take,'' include, but are not limited to:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Removing and reducing to possession any of the three plant species from areas under Federal jurisdiction; maliciously damaging or destroying any of the species on any such area; or removing, cutting, digging up, or damaging or destroying any of the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(3) Introducing any unauthorized nonnative wildlife or plant species to States where Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress occur that compete with or prey upon these three plant species;

(4) Releasing any unauthorized biological control agents into States where Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress occur that attack any life stage of these three plant species; and

(5) Modifying the habitat of Short's bladderpod, whorled sunflower, or fleshy-fruit gladecress on Federal lands without authorization or coverage under the Act for impacts to these species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. There are no known instances of these three plant species on Tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Tennessee and Alabama Ecological Services Field Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend § 17.12(h) by adding entries to the List of Endangered and Threatened Plants for *Helianthus verticillatus, Leavenworthia crassa,* and *Physaria globosa,* in alphabetical order under Flowering Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Helianthus verticillatus.	whorled sunflower ..	U.S.A. (AL, GA, TN)	Asteraceae	E	842	NA	NA
Leavenworthia crassa.	fleshy-fruit gladecress.	U.S.A. (AL)	Brassicaceae	E	842	NA	NA
Physaria globosa	Short's bladderpod	U.S.A. (IN, KY, TN)	Brassicaceae	E	842	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: July 24, 2014.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–18103 Filed 7–31–14; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 79, No. 148
Friday, August 1, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–14–0004]

RIN 0563–AC44

Common Crop Insurance Regulations; Macadamia Tree Crop Insurance Provisions and Macadamia Nut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Macadamia Tree Crop Insurance Provisions and the Macadamia Nut Crop Insurance Provisions to remove the provision requiring an optional unit to contain at least 80 acres. The intended effect of this action is to provide policy changes and to better meet the needs of the producers. The changes will apply for the 2016 and succeeding crop years for macadamia trees and the 2017 and succeeding crop years for macadamia nuts.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 30, 2014 and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–14–0004 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public.

All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination With Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance

guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.130 Macadamia Tree Crop Insurance Provisions and § 457.131 Macadamia Nut Crop Insurance Provisions to be effective for the 2016 and succeeding crop years for macadamia trees and the 2017 and succeeding crop years for macadamia nuts.

The proposed changes to § 457.130 are as follows:

1. Section 1—FCIC proposes to add a definition of ''damaged.'' The terms ''damaged'' and ''destroyed'' are used throughout the Crop Provisions. The term ''damaged'' is not defined, but the term ''destroyed'' is. FCIC is proposing to add a definition of ''damaged'' to clarify that there is a distinction between ''damaged'' and ''destroyed.'' FCIC's proposed definition of ''damaged'' is injury to the main trunk, scaffold limb(s), and any other subordinate limbs that reduces the productivity of the tree due to an insured cause of loss occurring during the insurance period.

FCIC also proposes to add a definition of ''scaffold limb'' since it is used in the proposed definition of ''damaged.'' It is given the same meaning as the term in other tree crop policies for consistency.

2. Section 2—FCIC proposes to revise section 2 by removing paragraph (a) which states sections 34(b)(1), (3) and (4) of the Basic Provisions are not applicable. These sections of the Basic Provisions state that the crop must be planted in a manner such that there is a clear and discernible break between optional units, the insured must have records for at least the previous crop year for each optional unit, and the insured must have records of marketed or stored production from each optional unit maintained in such a manner that permits the insurance provider to verify the production from each optional unit. Under the current policy, insureds who utilize optional units can manipulate their unit boundaries to maximize indemnities because there is no current requirement for discernible breaks between units. By removing paragraph (a), sections 34(b)(1), (3) and (4) of the Basic Provisions become applicable and, therefore, minimize program abuse as it relates to unit division.

FCIC also proposes to revise section 2 by removing the provision that requires an optional unit to contain at least 80 acres. Most macadamia tree orchards contain less than 80 acres so very few insureds are eligible for this provision. Removing this provision provides an equitable opportunity for insureds who farm large operations and those who farm small operations to qualify for optional units. The changes made above will mitigate any potential abuse from this change.

3. Section 10—FCIC proposes to revise section 10 to include information regarding destroyed trees and allowing for the insurance provider to conduct an inspection before the insured removes any destroyed trees. The current provisions require insureds, if they intend to claim an indemnity on any unit, to allow the insurance provider to inspect all insured acreage before pruning or removing any damaged trees. However, the provisions are silent on regarding the removal of damaged trees. In order to conduct a proper appraisal, the insurance provider must identify damaged and destroyed trees before they are removed. Therefore, the insured must allow the insurance provider to conduct an inspection before the insured removes any damaged or destroyed trees.

4. Section 11—FCIC proposes to revise paragraph (c)(1). The current provisions specify that any orchard with over 80 percent actual damage due to an insured cause of loss will be considered to be 100 percent damaged. The proposed provisions are revised to clarify that over 80 percent of trees damaged and trees destroyed due to an insured cause of loss will be considered to be 100 percent damaged. FCIC also proposes to add a settlement of claim example in section 11.

The proposed changes to § 457.131 are as follows:

1. Section 1—FCIC proposes to add definitions of ''floaters'' and ''peewees'' since they are proposed to be incorporated into the definition of ''wet in-shell.'' These terms are commonly used in the macadamia nut and tree industry. FCIC's proposed definition of ''floaters'' is inedible, husked ''field run'' nuts identified by water floatation. FCIC's proposed definition of ''peewees'' is mature and immature wet in-shell nuts that are smaller than 16mm (5⁄8 inch) in diameter.

FCIC proposes to revise the definition of ''wet in-shell'' to incorporate a statement contained in the Special Provisions, which states wet in-shell excludes immature and unsound nuts (floaters and peewees). By incorporating this information into the Crop Provisions, FCIC can eliminate the Special Provisions statement.

2. Section 2—FCIC proposes to revise section 2 by removing paragraph (a) which states section 34(b)(1) of the Basic Provisions is not applicable. This section of the Basic Provisions states that the crop must be planted in a manner such that there is a clear and discernible break between optional units. Under the current provisions,

insureds who utilize optional units can manipulate their unit boundaries to maximize indemnities because there is no current requirement for discernible breaks between units. By removing paragraph (a), section 34(b)(1) of the Basic Provisions becomes applicable, and, therefore, minimizes program abuse as it relates to unit division.

FCIC also proposes to revise section 2 by removing the provision that requires an optional unit to contain at least 80 acres. Most macadamia nut orchards contain less than 80 acres so, very few insureds are eligible for this provision. Removing this provision provides an equitable opportunity for insureds who farm large operations and those who farm small operations to qualify for optional units. These changes are consistent with the changes that are proposed to the Macadamia Tree Crop Insurance Provisions. The changes made above will mitigate any potential abuse from this change.

3. Section 3—FCIC proposes to revise the paragraph (d) to update the crop years used in the example.

4. Section 8—FCIC proposes to revise paragraph (a)(2) to allow the calendar date for the end of the insurance period to be changed by the Special Provisions. This will provide flexibility to update this date if the need arises.

5. Section 11—FCIC proposes to add a settlement of claim example.

List of Subjects in 7 CFR Part 457

Crop insurance, Macadamia tree and Macadamia nut, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2016 and succeeding crop years for macadamia trees and for the 2017 and succeeding crop years for macadamia nuts to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

■ 2. Amend § 457.130 as follows:
■ a. Amend the introductory text by removing ''2011'' and adding ''2016'' in its place;
■ b. Amend section 1 by adding in alphabetical order definitions of ''damaged'' and ''scaffold limb'';
■ c. Revise section 2;
■ d. Amend section 3 by removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' in paragraphs (a) introductory text and (b);
■ e. Amend section 4 by removing the phrase ''(Contract Changes)'';
■ f. Amend section 5 by removing the phrase ''(Life of Policy, Cancellation, and Termination)'';
■ g. Amend section 6 introductory text by removing the phrase ''(Insured Crop)'';
■ h. Amend section 7 by removing the phrase ''(Insurable Acreage)'';
■ i. Amend section 8 by removing the phrase ''(Insurance Period)'' paragraphs (a) introductory text and (b) introductory text;
■ j. Amend section 9 by removing the phrase ''(Causes of Loss)'' in paragraphs (a) introductory text and (b) introductory text;
■ k. Revise section 10; and
■ l. In section 11, revise paragraphs (b)(4), (c) introductory text, and (c)(1).

The revisions read as follows:

§ 457.130 Macadamia tree crop insurance provisions.

* * * * *

1. Definitions

* * * * *

Damaged. Injury to the main trunk, scaffold limb(s), and any other subordinate limbs that reduces the productivity of the macadamia tree due to an insured cause of loss that occurs during the insurance period.

* * * * *

Scaffold limb. A major limb attached directly to the trunk.

2. Unit Division

(a) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(b) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year.

* * * * *

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning any damaged trees, removing any damaged trees, or removing any destroyed trees.

11. Settlement of Claim

* * * * *

(b) * * *

* * * * *

(4) Multiply the result in section 11(b)(3) by your share.

For example:

You select 65 percent coverage level and 100 percent of the price election on 10 acres of 9-year-old macadamia trees in the unit. Your share is 100 percent. The amount of insurance per acre is $5,850. There are 90 trees per unit. Thirty five trees are destroyed. Your indemnity would be calculated as follows:

(1) 10 acres × $5,850 = $58,500;

(3)(i) 100 percent − 65 percent = 35 percent deductible;

(ii) 35 destroyed trees ÷ 90 total unit trees = 38.9 percent loss; 38.9 percent loss − 35 percent deductible = 3.9 percent;

(iii) 3.9 percent ÷ 65 percent coverage level = 6.0 percent loss; and $58,500 total amount of insurance × 6.0 percent loss = $3,510 loss; and

(4) $3,510 loss × 100 percent share = $3,510 indemnity payment.

(c) The total amount of loss will include both damaged trees and destroyed trees as follows:

(1) Any orchard with over 80 percent of the actual trees damaged or destroyed due to an insured cause of loss will be considered to be 100 percent damaged; and

* * * * *

■ 3. Amend § 457.131 as follows:
■ a. Amend the introductory text by removing ''2012'' and adding ''2017'' in its place;
■ b. In section 1:
■ i. By adding definitions of in alphabetical order ''floaters'' and ''peewees''; and
■ ii. By revising the definition of ''wet in-shell'';
■ c. Revise section 2;
■ d. In section 3:
■ i. By removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' in the introductory text and paragraph (b) introductory text;
■ ii. In paragraph (b)(4) introductory text by removing the word ''anytime'' and replacing it with the phrase ''any time''; and
■ iii. By revising paragraph (d);
■ e. Amend section 4 by removing the phrase ''(Contract Changes)'';
■ f. Amend section 5 by removing the phrase ''(Life of Policy, Cancellation, and Termination)'';
■ g. In section 6:
■ i. By removing the phrase ''(Insured Crop)'' in the introductory text; and
■ ii. In paragraph (d) by removing the phrase ''agree in writing'' and adding in

its place the phrase ''give our approval in writing''; and
■ iii. In paragraph (d) by removing the phrase ''wet, in-shell'' and adding in its place the phrase ''wet in-shell'';
■ h. In section 7:
■ i. By removing the phrase ''(Insurable Acreage)''; and
■ ii. By removing the comma after the phrase ''Basic Provisions (§ 457.8)'';
■ i. In section 8:
■ i. By removing the phrase ''(Insurance Period)'' in paragraphs (a) introductory text and (b) introductory text; and
■ ii. By revising paragraph (a)(2);
■ j. Amend section 9 by removing the phrase ''(Causes of Loss)'' in paragraphs (a) introductory text and (b) introductory text;
■ k. Amend section 10 introductory text by removing the phrase ''(Duties in the Event of Damage or Loss)'';
■ l. In section 11:
■ i. In paragraph (b)(4) by removing the phrase ''if applicable, (see section 11(c))'' and adding in its place the phrase ''if applicable (see section 11(c)),'';
■ ii. Adding a settlement of claim example after paragraph (b)(7); and
■ iii. In paragraph (c) by removing the phrase ''(wet, in-shell pounds)'' and adding in its place the phrase ''(we in-shell pounds)''.

The revisions and additions read as follows:

§ 457.131 Macadamia nut crop insurance provisions.

* * * * *

1. Definitions

* * * * *

Floaters. Inedible, husked ''field run'' nuts identified by water floatation.

* * * * *

Peewees. Mature and immature wet in-shell nuts that are smaller than 16 mm (5/8 inch) in diameter, or as otherwise specified in the Special Provisions.

* * * * *

Wet in-shell. The weight of the macadamia nuts as they are removed from the orchard with the nut meats in the shells after removal of the husk and excluding floaters and peewees but prior to being dried.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(d) Instead of reporting your macadamia nut production for the previous crop year, as required by section 3 of the Basic Provisions, there is a one-year lag period. Each crop year you must report your production from two crop years ago, e.g., on the 2016 crop year production report, you will provide your 2014 crop year production.

* * * * *

8. Insurance Period

(a) * * *

(2) The calendar date for the end of the insurance period for each crop year is the second June 30th after insurance attaches, or as specified in the Special Provisions.

* * * * *

11. Settlement of Claim

* * * * *

(b) * * *

(7) * * *

For example:

You select 65 percent coverage level and 100 percent of the price election on 10 acres of macadamia nuts in the unit. Your share is 100 percent. Your production guarantee (per acre) is 4,000 pounds. The price election is $0.78. You are able to harvest 25,000 pounds. Your indemnity would be calculated as follows:

(1) 10 acres × 4,000 pounds = 40,000 pounds guarantee;

(2) 40,000 pounds × $0.78 price election = $31,200 total value of guarantee;

(4) 25,000 pounds production to count × $0.78 price election = $19,500 value of production to count;

(6) $31,200 total value of guarantee − $19,500 value of production to count = $11,700 loss; and

(7) $11,700 loss × 100 percent share = $11,700 indemnity payment.

* * * * *

Signed in Washington, DC, on July 23, 2014.

Brandon Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2014–17997 Filed 7–31–14; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0516; Directorate Identifier 2014–CE–021–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Pacific Aerospace Limited Model 750XL airplanes that would supersede AD 2014–04–03. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as broken control column attachment bolts failing in service. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 15, 2014.

ADDRESSES: You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag 3027 Hamilton 3240, New Zealand; telephone: +64 7 843 6144; fax: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *http://www.aerospace.co.nz/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the

availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0516; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0516; Directorate Identifier 2014–CE–021–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On February 10, 2014, we issued AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014). That AD required actions intended to address an unsafe condition on all Pacific Aerospace Limited Model 750XL airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014), Pacific Aerospace Limited revised the related service information.

The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, has issued AD DCA/750XL/15A, dated June 26, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for Pacific Aerospace Limited Model 750XL airplanes. The MCAI states:

> DCA/750XL/15A revised to mandate the embodiment of modification PAC/XL/0627 to the control column attachment per the instructions in Pacific Aerospace Limited Service Bulletin (SB) PACSB/XL/070 issue 2, dated 3 June 2014.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0516.

Relevant Service Information

Pacific Aerospace Limited has issued Service Bulletin PACSB/XL/070, Issue 2, dated June 3, 2014. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 17 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $200 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $12,070, or $710 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

The cost difference between AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014), and this proposed AD is the increase in work-hours from 1.5 to 6 and the increase in cost for parts from $100 to $200, for an overall cost difference on U.S. operators to be $8,202.50, or $482.50 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Amend § 39.13 by removing Amendment 39–17761 (79 FR 10344, February 25, 2014), and adding the following new AD:

Pacific Aerospace Limited: Docket No. FAA–2014–0516; Directorate Identifier 2014–CE–021–AD.

(a) Comments Due Date

We must receive comments by September 15, 2014.

(b) Affected ADs

This AD supersedes AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014).

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as control column attachment bolts failing in service. We are issuing this AD to prevent failure of the control column attachment bolt, which could result in control column detachment and cause loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (f)(2) of this AD:

(1) As of February 24, 2014 (the effective date of AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014)), if the left hand and the right hand control column attachment bolts have been replaced following the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/070, Issue 1, dated January 24, 2014, then within the next 150 hours time-in-service (TIS) after the effective date of this AD, replace the left hand and the right hand control column attachment bolts following the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/070, Issue 2, dated June 3, 2014.

(2) As of February 24, 2014 (the effective date of AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014)), if the left hand and the right hand control column attachment bolts have not been replaced following the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/070, Issue 1, dated January 24, 2014, then within the next 10 hours TIS after the effective date of this AD, replace the left hand and the right hand control column attachment bolts following the ACCOMPLISHMENT INSTRUCTIONS in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/070, Issue 2, dated June 3, 2014.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):*

(i) The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

(ii) AMOCS approved for AD 2014–04–03, Amendment 39–17761 (79 FR 10344, February 25, 2014) are not approved as AMOCs for this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD DCA/750XL/15A, dated June 26, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0516. For service information related to this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag 3027 Hamilton 3240, New Zealand; telephone: +64 7 843 6144; fax: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *http://www.aerospace.co.nz/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on July 28, 2014.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18144 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0367]

RIN 1625–AA09

Drawbridge Operation Regulation; Darby Creek, Essington, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulation that governs the Conrail railroad bridge over Darby Creek in Essington, PA. The bridge owner, Conrail, is modifying the existing remote operating system which controls the bridge operations. Cameras will be installed and the remote operating site will move from its current location in Delair, NJ to Mt. Laurel, NJ. Train crews will no longer be required to stop and check the waterway for approaching vessel traffic prior to initiating a bridge closure, and mariners requesting an opening for the bridge will have to contact the new remote location.

DATES: Comments and related material must be received by the Coast Guard on or before September 15, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0367 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mrs. Jessica Shea, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757–398–6422, email *jessica.c.shea2@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager,

Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
Conrail Consolidated Rail Corporation
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG–2014–0367), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2014–0367 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0367) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The bridge owner, Conrail, requested a change to 33 CFR § 117.903 due to their intent to modify the current sensor equipment on site at their bridge across Darby Creek and to relocate the remote operation station to a new location. The proposed regulation changes will change two aspects of the bridge operation. Specifically, the location of the remote operator and the installation of cameras to verify whether any vessels are transiting the waterway before a bridge closure is initiated. This proposed rule will not change the operating schedule of the bridge.

The scope of the waterway inspection is different between the current on-site train crewmember inspection process and the range of the proposed camera installation. There is also a difference in the time it takes between the inspection and the initiation of the bridge closure operations. Currently the regulation requires an on-site train crewmember to conduct an inspection of the waterway for vessels by stopping the train approximately 200 feet north of the bridge site when approached from the north and 300 feet south of the bridge site when approached from the south. Once the train is stopped, the train crewmember walks to the bridge site and physically looks up and down the channel. The time it takes to stop the train, walk to the bridge, conduct the inspection, walk back to the train, and re-start the train takes 15–20 minutes. The proposed regulation allows the remote operating station to inspect the waterway with cameras without first stopping the train which permits a more efficient operating system.

The closer the vessels are to the bridge, the more likely it is that the train crewmember will see them using the process required by the current regulation. Under the proposed regulations, the camera inspection of the waterway has the capability to zoom up and down stream allowing for easier detection of a smaller vessel approaching the bridge. After inspection of the waterway, using the cameras, the bridge closing operations would then occur from a remote location at the Mt. Laurel remote operating station.

Currently, the bridge is in the open to navigation position between April 1 and October 31 and operated by the bridge controller at the remote operating station in Delair, NJ. The shift from the Delair, NJ to the Mt. Laurel, NJ operating station enables Conrail to consolidate its control of the train line and Darby Creek Bridge. By controlling the track as well as the bridge operating mechanism at the Mt. Laurel station, the remote operator has access to more information regarding the anticipated arrival time for when the trains will be at the bridge site. Information such as train speed and location directly contribute to when the bridge will need to be closed. The proposed shift of the remote operating location to the Mt. Laurel location may shorten the duration of the bridge closures due to the higher accuracy of information on train speed and anticipated arrival time at the bridge site.

The average tidal range for Darby Creek is 5 feet. Currents run on average between 1–2 knots. The actual depth at the bridge ranges between 15 and 20 feet. Darby Creek is used by several recreational vessels during the summer boating season. There is no commercial vessel traffic on Darby Creek.

From April 1 to October 31, the bridge is left in the open to navigation position and will only be lowered for the passage of train and maintenance. Train activity in this location requires the bridge to

close to navigation four times a day Monday thru Friday. On Saturday and Sunday, the bridge is used twice each day.

From November 1 through March 31, the bridge is in the closed to navigation position but will open if 24 hours notice is given.

C. Discussion of Proposed Rule

Under the proposed regulation, the responsibility to conduct a visual examination of the waterway to confirm whether or not any vessels are present will shift from the train crew to the Mt. Laurel remote operating station. The train crew will not be required to stop and check the waterway prior to the remote operating station closing or opening the bridge. A new requirement for the remote operating station is being proposed that mandates they use cameras to confirm whether any vessels are navigating Darby Creek prior to closing the bridge.

From the controls at the Mt. Laurel remote operating station, the timeframe to initiate the bridge closure is not more than 15 minutes before a train will arrive at the bridge location. The system currently in place at the Delair remote operating system operates with a similar timeframe. At the Mt. Laurel remote operating station, the cameras will be used continuously during the bridge closure operations to monitor the waterway for the presence of vessels. The current system does not have the capability to continuously visually monitor the waterway.

The bridge is currently being operated remotely. The location of the remote operation will move from its current site in Delair, NJ to Mt. Laurel, NJ. Under the proposed regulation, the bridge will continue to remain in the closed to navigation from November 1 through March 31. During this timeframe, the bridge will open if 24 hours notice is given. Shifting the remote operating location to Mt. Laurel also changes the phone number to request an opening to (856) 231–2282. This telephone number will be manned 24 hours a day throughout the year.

Under the current regulation, the remote operating site monitors infrared sensors. These sensors will continue to be used as a means to detect vessel traffic. The sensor protocol will be amended to include the camera system as part of the equipment failure protocols. The protocol for actions in the event of a sensor failure or detection of an obstruction in the channel is not changed by the proposed regulation.

The requirement for the owner to provide a vertical clearance gage for waters discharging into the Atlantic Ocean south of Delaware Bay is stated in 33 CFR § 117.47. Since this requirement is already stated it is not necessary to restate it in 33 CFR § 117.903(a)(1) and will be removed from that regulation. The Coast Guard will still require the bridge owner to maintain two board gages on the bridge such that they are plainly visible to the operators of vessels approaching the bridge either up or downstream, as described in 33 CFR § 118.160.

The description of the flashing lights and sound signals which indicate bridge movement are not being changed by this regulation. The bridge will still use flashing green and red lights along with sounding the horn to notify waterway users that the bridge is changing position.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The changes proposed by this NPRM impact the methods used to operate the drawbridge. There are no changes proposed to the drawbridge operating schedule.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. There are no changes proposed to the drawbridge operating schedule. Vessels that can safely transit under the bridge may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.903 paragraph(a) to read as follows:

§ 117.903 Broad Creek

(a) The draw of the Conrail Railroad Bridge, mile 0.3, at Essington, will operate as follows:

(1) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b). However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(2) From April 1 through October 31, the draw shall be left in the open position at all times and will only be lowered for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(3) The bridge will be operated remotely by the South Jersey Train Dispatcher located in Mt. Laurel, NJ.

(4) The bridge will be equipped with cameras and channel sensors to visually and electronically ensure the waterway is clear before the bridge closes. The video will be located at the remote operating location in Mt. Laurel, NJ. The channel sensors will be a direct input to the bridge control system.

(5) While the Conrail Railroad Bridge is moving from the full open to the full closed position, the off-site bridge/train controller will maintain constant surveillance of the video and navigational channel using channel sensors to ensure no conflict with maritime traffic exists. In the event of video failure the bridge will remain in the full open position. In the event of failure or obstruction of the infrared channel sensors, the bridge will automatically stop closing and the South Jersey Train Dispatcher will return the bridge to the open position.

(6) When the draw cannot be operated from the remote site, a bridge tender must be called to operate the bridge in the traditional manner. Personnel shall be dispatched to arrive at the bridge as soon as possible, but not more than one hour after malfunction or disability of the remote system.

(7) The Conrail Railroad channel traffic lights will change from flashing green to flashing red anytime the bridge is not in the full open position.

(8) During downward span movement, the channel traffic lights will change from flashing green to flashing red, the horn will sound two times, followed by a pause, and then two repeat blasts until the bridge is seated and locked down.

(9) When the rail traffic has cleared, the off-site bridge and train controller at Mt. Laurel will sound the horn five times to signal the draw of the Conrail Railroad Bridge is about to return to its full open position.

(10) During upward span movement, the horn will sound two times, followed by a pause, and then sound repeat blasts until the bridge is in the full open position. In the full open position, the channel traffic lights will then turn from flashing red to flashing green.

(11) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given by telephone at (856) 231–2282. Operational information will be provided 24 hours a day by telephone at (856) 231–2282.

* * * * *

Dated: July 17, 2014.

Stephen P. Metruck,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2014–18267 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0476; FRL- 9914–58-Region-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Adoption of Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing; Flexible Package Printing; and Industrial Solvent Cleaning Operations for Control of Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania. This SIP revision includes amendments to the Allegheny County Health Department (ACHD) Rules and Regulations, Article XXI, Air Pollution Control, and meets the requirement to adopt Reasonably Available Control Technology (RACT) for sources covered by EPA's Control Techniques Guidelines (CTG) standards for the following categories: Offset lithographic printing and letterpress printing, flexible package printing, and industrial solvent cleaning operations. EPA is proposing to approve the revision to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0476 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0476, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0476. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including RACT, for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIP to include RACT for sources of volatile organic compound (VOC) emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment. EPA defines RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' 44 FR 53761 (September 17, 1979).

CTGs are documents issued by EPA intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOC emissions from various sources. Section 183(e)(3)(c) provides that EPA may issue a CTG in lieu of a national regulation as RACT for a product category where EPA determines that the CTG will be substantially as effective as regulations in reducing emissions of VOC in ozone nonattainment areas. The recommendations in the CTG are based upon available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

In 1993, EPA published a draft CTG for offset lithographic printing. 58 FR 59261. After reviewing comments on the draft CTG and soliciting additional information to help clarify those comments, EPA published an alternative control techniques (ACT) document in June 1994 that provided supplemental information for states to use in developing rules based on RACT for offset lithographic printing. In December 1978, EPA published a CTG for graphic arts (rotogravure printing and flexographic printing) that included flexible package printing. In 1994, EPA developed an ACT document for industrial cleaning solvents. After reviewing the 1978/1993/1994 CTGs and ACTs for these industries, conducting a review of currently existing state and local VOC emission reduction approaches for these industries, and taking into account any information that has become available

since then, EPA developed new CTGs entitled *Control Techniques Guidelines for Offset Lithographic and Letterpress Printing* (Publication No. EPA 453/R–06–002; September 2006); *Control Techniques Guidelines for Flexible Package Printing* (Publication No. EPA 453/R–06–003; September 2006); *Control Techniques Guidelines for Industrial Cleaning Solvents* (Publication No. EPA 453/R–06–001; September 2006). The CTG recommendations may not apply to a particular situation based upon the circumstances of a specific source. Regardless of whether a state chooses to implement the recommendations contained within the CTGs through state rules, or to issue state rules that adopt different approaches for RACT for VOCs, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

III. Summary of SIP Revision

On November 15, 2013, Pennsylvania Department of Environmental Protection (PADEP) submitted to EPA a SIP revision concerning the adoption of the EPA CTGs for offset lithographic printing and letterpress printing; flexible package printing; and industrial cleaning solvent operations in Allegheny County. These regulations are contained in the ACHD Rules and Regulations, Article XXI, Air Pollution Control sections 2105.80, 2105.81, and 2105.82 in order to: (1) Establish applicability for offset lithographic printing and letterpress printing, flexible package printing, and industrial cleaning solvent operations at facilities; (2) establish exemptions; (3) establish record-keeping and work practice requirements; and (4) establish emission limitations. More detailed information on these provisions as well as a detailed summary of EPA's review and rationale for proposing to approve this SIP revision can be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2014–0476.

IV. Proposed Action

EPA is proposing to approve the Commonwealth of Pennsylvania SIP revision submitted on November 15, 2013, which consists of amendments to the ACHD Rules and Regulations, Article XXI, Air Pollution Control, and meets the requirement to adopt RACT for sources located in Allegheny County covered by EPA's CTG standards for the following categories: Offset lithographic printing and letterpress printing, flexible package printing, and industrial solvent cleaning operations. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to ACHD's adoption of CTG standards for offset lithographic printing and letterpress printing, flexible package printing, and industrial solvent cleaning operations does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 14, 2014.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–18226 Filed 7–31–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0008; FRL–9911–67]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before September 2, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://*

www.epa.gov/dockets/contacts.html. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.,* Lois Rossi, Registration Division (RD) (7505P), telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

1. *PP 3F8166.* (EPA–HQ–OPP–2013–0268). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, thiabendazole (2-(4-thiazolyl)benzimidazole) and its metabolite benzimidazole, in or on vegetable, root (except sugar beet), subgroup 1B at 0.02 ppm; radish, tops at 0.02 ppm; onion, bulb, subgroup 3–07A at 0.02 ppm; brassica, head and stem, subgroup 5–A at 0.02 ppm; vegetable, cucurbit group 9 at 0.02 ppm; barley, grain at 0.05 ppm; barley, hay at 0.30 ppm; barley, straw at 0.30 ppm; wheat, grain at 0.05 ppm; wheat, straw at 0.30 ppm; wheat, hay at 0.30 ppm; wheat, forage 0.30 ppm; oats, grain at 0.05 ppm; oats, hay at 0.30 ppm; oats, straw at 0.30 ppm; oats, forage at 0.30 ppm; rye, grain at 0.05 ppm; rye, straw at 0.30 ppm; rye, forage at 0.30 ppm; triticale, grain at 0.05 ppm; triticale, hay at 0.30 ppm; triticale, straw at 0.30 ppm; triticale, forage at 0.30 ppm; alfalfa, forage at 0.02 ppm; alfalfa, hay at 0.02 ppm; and spinach at 0.02 ppm. The Pesticide Analytical Manual (PAM) Vol. II lists four spectrophotoflurometric methods (Methods I, A, B and C) for spectrophotoflurometric method

(Method D) for determining residues of thiabendazole and 5-hydroxy-thiabendazole in milk. This Notice of Filing (NOF) supersedes the NOF published June 5, 2013, Vol 78. Number 198. (RD)

2. *PP* 4E8257. (EPA–HQ–OPP–2014–0315). Interregional Research Project Number 4 (IR–4), IR–4 Project Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide), in or on ginseng at 1.5 ppm. The analytical method, gas chromatography/electron capture detector (GC/ECD) is used to measure and evaluate residues of captan *per se* in or on plant commodities, and is listed as Method I, in PAM, Vol. II. (RD)

3. *PP 4E8264.* (EPA–HQ–OPP–2014–0346). IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, prohexadione calcium, in or on the raw agricultural commodities strawberry at 0.3 ppm and watercress at 2.0 ppm. Analytical methods using liquid chromatography with tandem mass spectrometry (LC/MS/MS) and gas chromatography-mass spectrometry (GC–MS) are used to measure and evaluate the chemical, prohexadione calcium, in strawberry and watercress, respectively. (RD)

4. *PP 4F8240.* (EPA–HQ–OPP–2014–0303). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the of the herbicide, mesotrione (2-[4-(methylsulfonyl)-2-notrobenzoyl]-1,3-cyclohexadione) in or on the raw agricultural commodities; citrus fruit, crop group 10–10 at 0.01 ppm; pome fruit, crop group 11–10 at 0.01 ppm; stone fruit, crop group 12–12 at 0.01 ppm; tree nuts, crop group 14–12 at 0.01 ppm; and almond hulls at 0.015 ppm. The practical and specific analytical method RAM 366/01, utilizing high-performance liquid chromatography (HPLC) with tandem mass-spectrometry (MS/MS) detection, is available for detecting and measuring the level of mesotrione in or on various crop commodities. This method has been submitted to the Agency for inclusion in the Pesticide Analytical Manual Volume II (PAM II) as a confirmatory method. (RD)

5. *PP4F8249.* (EPA–HQ–OPP–2014–0314). Dow Agro Sciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy] acetic acid in or on milk, fat at 0.7 ppm. An analytical method using electron capture gas chromatography is used to measure and evaluate the chemical triclopyr. (RD)

6. *PP 4F8254.* (EPA–HQ–OPP–2014–0340). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the plant growth regulator, trinexapac-ethyl (4-(cyclopropyl-α-hydroxy-methylene)-3,5-dioxo-cyclohexanecarboxylic acid ethyl ester), expressed as its primary metabolite CGA–179500 (4-(cyclopropyl-α-hydroxy-methylene)-3,5-dioxo-cyclohexanecarboxylic acid), in or on rice, bran at 1.5 ppm; rice, grain at 0.4 ppm; rice, straw at 0.07 ppm; rice, wild, grain at 0.4 ppm; rye, bran at 2.5 ppm; rye, grain at 2.0 ppm; rye, hay at 0.8 ppm; and rye, straw at 0.4 ppm. Adequate enforcement methodology LC/MS/MS methods (GRM020.01A) is available to enforce the tolerance expression. (RD)

7. *PP 4F8256.* (EPA–HQ–OPP–2014–0339). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, saflufenacil (2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2H)-pyrimidinyl]-4-fluoro-N-[[methyl(1-methylethyl)amino]sulfonyl]benzamide) and its metabolites, in or on alfalfa, forage at 0.075 ppm and alfalfa, hay at 0.10 ppm. Adequate enforcement methodology LC/MS/MS methods D0603/02 (plants) and L0073/01 (livestock) are available to enforce the tolerance expression. (RD)

8. *PP 4F8263.* (EPA–HQ–OPP–2014–0354). Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide sedaxane (N-[2-[1,1′-bicyclopropyl]-2-ylphenyl]-3-(difluoromethyl)-1-methyl-1H-pyrazole-4-carboxamide), as a seed treatment for cotton, undelinted seed at 0.01 ppm; cotton, gin byproducts at 0.01 ppm; and beet, sugar at 0.01 ppm. Various crops were analyzed for sedaxane (parent only) using a procedure for analysis of sedaxane (SYN524464) that can distinguish between its trans- and cis-isomers (SYN508210 and SYN508211). Plant matrices using method GRM023.01A, or modified method GRM023.01B are taken through an extraction procedure with final determination by HPLC with triple quadrupole MS detection LC–MS/MS. (RD)

Amended Tolerance

1. *PP 4F8245.* (EPA–HQ–OPP–2014–0247) from BASF Corporation, 26 Davis Drive, Research Triangle Park, NC, 27709 requests to amend the tolerances in 40 CFR 180.361 for the combined residues of the herbicide, pendimethalin (N-(1-ethylpropyl)-3,4-dimethyl-2,6dinitrobenzenamine), and its 3, 5-dinitrobenzyl alcohol metabolite (CL 202347) in or on the raw agricultural commodities of alfalfa, forage at 80 ppm; and alfalfa, hay at 150 ppm. In plants the method is aqueous organic solvent extraction, column clean up, and quantitation by GC. The method has a limit of quantitation (LOQ) of 0.05 ppm for pendimethalin and the alcohol metabolite. (RD)

2. *PP4F8249.* (EPA–HQ–OPP–2014–0314). Dow Agro Sciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054, requests to amend the tolerance in 40 CFR 180.417 for residues of the herbicide, triclopyr, [(3,5,6-trichloro-2-pyridinyl)oxy] acetic acid in or on milk, at 0.03 ppm. An analytical method using electron capture gas chromatography is used to measure and evaluate the chemical triclopyr. (RD)

New Tolerance Exemption

1. *PP 3E8222.* (EPA–HQ–OPP–2014–0358). IR–4, Rutgers University, 500 College Road East, Suite 201W, Princeton, NJ 08540, on behalf of CAI America LLC, 309 Fairwinds Drive, Cary, NC 27518, requests to establish an exemption from the requirement of a tolerance for residues of the nematocide, insecticide, and fungicide, Propylene Glycol Alginate, in or on all raw agricultural food commodities. The petitioner believes no analytical method is needed because there are no anticipated residues, and because there is already sufficient information with the Agency to support an existing pre- and post-harvest exemption for propylene glycol alginate when it is used as an inert ingredient per 40 CFR 180.910. (BPPD)

2. *PP 3F8195.* (EPA–HQ–OPP–2014–0353). D–I–1–4, Inc., a division of 1,4 Group, Inc., P.O. Box 860, Meridian, ID 83360, requests to establish an exemption from the requirement of a tolerance for residues of the 1-octanol, applied post-harvest to stored potatoes and other sprouting root and tuber crops. The petitioner believes no analytical method is needed because it is expected that, when used as proposed 1-octanol would not result in residues that are of toxicological concern. (BPPD)

3. *PP 3F8219.* (EPA–HQ–OPP–2014–0155). SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192 (on behalf of Andermatt Biocontrol AG, Stahlermatten 6 CH–6146, Grossdietwil, Switzerland), requests to establish an exemption from the requirement of a tolerance for residues of the microbial active ingredient, *Autographa californica* multiple nucleopolyhedrovirus (AcMNPV) strain FV #11, in or on all raw and processed agricultural commodities when used on crops in accordance with good agricultural practices. The petitioner believes no analytical method is needed because it is seeking to establish an exemption from the requirement of a tolerance. (BPPD)

4. *PP 4F8233.* (EPA–HQ–OPP–2014–0352). DSM Food Specialties B.V., Alexander Fleminglaan 1, 2613 AX Delft, The Netherlands, requests to amend the established an exemption from the requirement of a tolerance for residues of the fungicide, natamycin (6,ll,28-Trioxatricyclo[22.3.1.05,7]octacosa-8,14,16,18,20-pentaene-25-carboxylic acid, 22-[(3-amino-3,6-dideoxy-B~D-mannopyranosyl)oxy]-l,3,26-trihydroxy-12-methyl-10-oxo-, (1R,3S,5R,7R,8E,I2R,14E,16E,18E,20E, 22R,24S,25R,26S)- at 40 CFR 180.1315, in or on mushrooms in enclosed mushroom production facilities to include post-harvest indoor use on pineapples. A worst-case estimate of the natamycin exposure in the diet were calculated using the following:

a. Maximum pineapple consumption;

b. Use of the consumption data of the most highly exposed population group; and

c. Use of the maximum residue found in the trials in any treated juice or meat sample, rather than the most probable residue.

On this basis, calculations for exposure to natamycin through consumption of treated pineapple yielded a Margin of Exposure (MOE) of approximately one million. (BPPD)

5. *PP IN–10626.* (EPA–HQ–OPP–2013–0695). United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406, requests to establish an exemption from the requirement of a tolerance for 1,1'-iminodiproan-2-ol (diisopropanolamine; DIPA; CAS No. 110–97–4) under 40 CFR 180.910 when used as a pesticide inert ingredient in pesticide formulations as a neutralizer or stabilizer in a pesticide formulation at no more than 10% by weight of the formulation. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. (RD)

6. *PP IN–10684.* (EPA–HQ–OPP–2014–0325). Huntsman Corporation, 8600 Gosling Road, The Woodlands, TX 77381, requests to establish an exemption from the requirement of a tolerance for residues of the ethanesulfonic acid, 2-hydroxy-(CAS #107–36–8), and the corresponding ammonium (CAS #57267–78–4), sodium (CAS #1562–00–1), potassium (CAS #1561–99–5), calcium (10550–47–7), magnesium (17345–56–1), zinc (CAS #129756–32–7), salts under 40 CFR 180.910 and 180.930 when used as a pesticide inert ingredient in pesticide formulations on all raw agricultural commodities. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. (RD)

7. *PP IN–10689.* (EPA–HQ–OPP–2014–0393). Celanese Ltd, 222 W. Las Colinas Blvd., Suite 900N, Irving, TX 75039, requests to establish an exemption from the requirement of a tolerance for residues of the acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) minimum number average molecular weight (in amu) 16,200 (CAS No. 913187–38–9) under 40 CFR 180.960 when used as a pesticide inert ingredient in pesticide formulations as a binder and wetting agent for seed coating and adjuvant applications in pesticide formulations. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. (RD)

8. *PP IN–10693.* (EPA–HQ–OPP–2014–0326). Archer Daniels Midland Company, 4666 E. Faries Parkway, Decatur, IL 62526, requests to establish an exemption from the requirement of a tolerance for residues of the Sodium lactate, when either of the following isomers: sodium L-lactate (CAS #867–56–1) and sodium D,L-lactate (CAS #72–17–3) when used as a pesticide inert ingredient in pesticide formulations applied to growing crops, or to raw agricultural commodities post-harvest under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. (RD)

9. *PP IN–10697.* (EPA–HQ–OPP–2014–0324). Specialty Fertilizer Products LLC, 11550 Ash Street, Suite 220, Leawood, KS 66211, requests to establish an exemption from the requirement of a tolerance for residues of the butanedioic acid, 2-methylene-, polymer with 2,5-furandione, sodium and ammonium salts, hydrogen peroxide-initiated (CAS Reg. No. 556055–76–6 and 701908–99–8) under 40 CFR 180.960 when used as a pesticide inert ingredient as a suspension agent in pesticide formulations. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. (RD)

10. *PP IN–10700.* (EPA–HQ–OPP–2014–0332). BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932, requests to establish an exemption from the requirement of a tolerance for residues of the for 2-Propenoic acid, butyl ester, polymer with 1,6-diisocyanatohexane, N-(hydroxymethyl)-2-methyl-2-propenamide and 2-propenenitrile (CAS No. 1469998–09–1) under 40 CFR 180.960 when used as a pesticide inert ingredient in pesticide formulations as a binder polymer in a pesticide formulations without limitation. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. (RD)

11. *PP 3F8193.* (EPA–HQ–OPP–2014–0329). Technology Sciences Group, Inc., 1150 18th St. NW., Suite 1000, Washington, DC 20036 (on behalf of Novozymes BioAg, Inc., 13100 W. Lisbon Rd., Suite 600, Brookfield, WI 53005), requests to establish an exemption from the requirement of a tolerance for residues of *Isaria fumosoroseus* strain FE 9901 in or on all food commodities when applied as an insecticide or miticide and used in accordance with good agricultural practices. The petitioner believes no analytical method is needed because it is seeking to establish an exemption from the requirement of a tolerance and it expects that, when used as directed, *Isaria fumosoroseus* strain FE 9901 will not result in residues that are of toxicological concern. (BPPD)

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 21, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2014–18049 Filed 7–31–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1089]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On May 25, 2010, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** a proposed rule that included modified Base (1% annual-chance) Flood Elevations (BFEs) for the locations along Black Bayou Lake, Canal L–11, East Branch Oliver Road Canal, Oliver Road Canal, and West Prong Youngs Bayou in Ouachita Parish, Louisiana. FEMA is no longer proposing these flood elevation determination changes along Black Bayou Lake, Canal L–11, East Branch Oliver Road Canal, Oliver Road Canal, and West Prong Youngs Bayou as identified in the above-referenced rulemaking publication.

DATES: Comments are to be submitted on or before September 2, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1089, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA publishes proposed determinations of BFEs and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 75 FR 29219, in the May 25, 2010, issue of the **Federal Register**, FEMA published a table on page 29229 under the authority of 44 CFR 67.4. The table, entitled ''Ouachita Parish, Louisiana, and Incorporated Areas,'' addressed several flooding sources, including Black Bayou Lake, Canal L–11, East Branch Oliver Road Canal, Oliver Road Canal, and West Prong Youngs Bayou. The proposed rule listed modified BFEs for Black Bayou Lake, Canal L–11, East Branch Oliver Road Canal, Oliver Road Canal, and West Prong Youngs Bayou between specific upstream and downstream locations listed in the table. FEMA is no longer proposing these flood elevation determination changes along Black Bayou Lake, Canal L–11, East Branch Oliver Road Canal, Oliver Road Canal, and West Prong Youngs Bayou as identified in the above-referenced rulemaking publication.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18086 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 140429386–4386–01]

RIN 0648–XD275

Petition To Designate Sakhalin Bay-Amur River Beluga Whales Stock as Depleted Under the Marine Mammal Protection Act; Finding

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 60-day petition finding; call for information.

SUMMARY: NMFS received a petition to ''designate the Sakhalin Bay-Amur River stock of beluga whales (*Delphinapterus leucas*) as a depleted stock under the Marine Mammal Protection Act (MMPA).'' NMFS finds that the petition presents substantial information indicating that the petitioned action may be warranted and will initiate a status review promptly. NMFS solicits information from the public that may contribute to the status review.

DATES: Information and comments must be received by close of business on September 2, 2014.

ADDRESSES: The petition and a list of references contained in this notice are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/.* A copy of the petition and/or its supporting documents may be requested from Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

You may submit comments, identified by [NOAA–NMFS–2014–0056], by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Beluga petition.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter

may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dr. Shannon Bettridge, Office of Protected Resources, Silver Spring, MD; *shannon.bettridge@noaa.gov;* (301) 427–8402.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2014, NMFS received a petition from the Animal Welfare Institute, Whale and Dolphin Conservation, Cetacean Society International and Earth Island Institute to ''designate the Sakhalin Bay-Amur River stock of beluga whales as depleted under the MMPA.'' The petition asserts this group of whales constitutes a stock and that this stock is below its optimum sustainable population (OSP) and qualifies for a depleted designation. It also argues that the stock continues to decline and faces a number of threats.

Section 3(1)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1362(1)(A)) defines the term ''depletion'' or ''depleted'' to include any case in which ''the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals . . . determines that a species or a population stock is below its optimum sustainable population.'' Section 3(9) of the MMPA (16 U.S.C. 1362(9)) defines ''optimum sustainable population [(OSP)] . . . with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [(K)] of the habitat and the health of the ecosystem of which they form a constituent element.'' NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (i.e., K) to its maximum net productivity level (MNPL). MNPL is the population abundance that results in the greatest net annual increment in population numbers resulting from additions to the population from reproduction, less losses due to natural mortality.

Historically, MNPL has been expressed as a range of values (between 50 and 70 percent of K) determined on a theoretical basis by estimating what stock size, in relation to the original stock size, will produce the maximum net increase in population (42 FR 12010, March 1, 1977). NMFS has determined that stocks with populations under the mid-point of this range (i.e., 60 percent of K) are depleted (42 FR 64548, December 27, 1977; 45 FR 72178, October 31, 1980). For stocks of marine mammals, K is often unknown. Therefore, NMFS has used the best available estimate of historical abundance as a proxy for K (68 FR 3483, January 24, 2014).

The MMPA allows interested parties to petition NMFS to initiate a status review to determine whether a species or stock of marine mammals should be designated as depleted. Section 115(a)(3) of the MMPA (16 U.S.C. 1383b(a)(3)) requires NMFS to publish a notice in the **Federal Register** that such a petition has been received and is available for public review. Within 60 days of receiving a petition, NMFS must publish a finding in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

Petition

The Animal Welfare Institute's petition alleges that the causes of the stock's decline include: Large-scale commercial hunting from 1915–1963; unsustainable removal quotas; hunting permits; incidental mortality from fishing operations; accidental drowning during live-capture operations; vessel strikes; and other anthropogenic threats. Copies of the petition are available from NMFS (see **ADDRESSES**).

Pursuant to Section 115(a)(3)(A) of the MMPA, NMFS published a notice in the **Federal Register** that the petition had been received and was available for public review (79 FR 28879, May 20, 2014). In response to its announcement that the petition had been received, NMFS received 17 comments, all expressing support for the petitioned action. Several non-governmental organizations submitted letters of support, providing information similar or identical to the information provided in the petition. These comments and supporting information can be found at *www.regulations.gov* (Docket ID: NOAA–NMFS–2014–0056).

Section 115(a)(3)(B) of the MMPA requires NMFS to publish a notice in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted. After reviewing information presented in the petition, readily available in our files, and submitted through the public comment process, NMFS finds there is substantial information indicating that the petitioned action may be warranted.

As required by the MMPA, NMFS will promptly begin a status review of the Sakhalin Bay-Amur River beluga whales. NMFS must publish a proposed rule as to the status of the stock no later than 210 days after receipt of the petition.

Analysis of the Petition on Sakhalin Bay-Amur River Beluga Whales

The Sakhalin Bay-Amur River beluga whales utilize areas in the western Sea of Okhotsk that include Russian territorial waters and the Russian Exclusive Economic Zone. The petition presents information on NMFS' authority to designate stocks outside of U.S. jurisdictional waters as depleted. The petition also asserts that the Sakhalin Bay-Amur River population of beluga whales comprises a stock. In addition, the petition presents information suggesting that the Sakhalin Bay-Amur River stock of beluga whales is depleted.

NMFS evaluated the petitioner's request based upon the information in the petition, including its references, information readily available in our files, and any additional information submitted through public comments (as solicited by the Notice of Petition Availability).

Sakhalin Bay-Amur River Beluga Whales as a Separate Stock

The petitioners suggest that genetic and satellite tag tracking data indicate the existence of at least two beluga whale populations in the Sea of Okhotsk: One in the northeastern region and the other in the western region (Shpak and Glazov, 2013). The petition presents information suggesting that the beluga whales in the western region of the Sea of Okhotsk comprise, and should be managed as, more than one stock. The petitioners state that for the beluga whales in the western region of the Sea of Okhotsk, evidence of distinct matrilineal lines, separate summer birthing and feeding distributions, and high site fidelity, all indicate that the region supports more than one stock of beluga whales, including a distinct Sakhalin Bay-Amur River stock. The petitioners point out that the International Union for the Conservation of Nature has recognized the existence of a distinct Sakhalin Bay-Amur River stock (Reeves et al., 2011). Additionally, the petition provides information demonstrating that the International Whaling Commission's

Scientific Committee (IWC SC) recognized the Sakhalin Bay-Amur River beluga whales as a separate stock in 1999 (IWC Report of the Sub-Committee on Small Cetaceans, 2000). A study included with the petition and in our files by Berzin et al. (1990) also concludes the Sakhalin Bay-Amur River beluga whales constitute a stock.

Sakhalin Bay-Amur River Beluga Whale Stock as Depleted

The petition presents information from 2009 and 2010 stock surveys indicating that the best current abundance estimate of the Sakhalin Bay-Amur River beluga whales is 3,961 whales (Reeves et al., 2011). The petitioners assert that this estimate is well below 60 percent of the lowest available estimate of historical abundance (7,000–10,000; Berzin and Vladimirov, 1989), and that the Sakhalin Bay-Amur River population of beluga whales therefore qualifies as depleted. The petition also notes that, after reviewing the available information on the status of beluga whales globally, the IWC SC described the Sakhalin Bay Amur-River stock of beluga whales as having a ''likely depleted status relative to historical abundance'' (IWC Report of the Sub-Committee on Small Cetaceans, 2000).

NMFS has analyzed the petition and its references, and information readily available in our files. Based on the surveys conducted in September 2009 and August 2010, NMFS believes that the best available science indicates that the minimum current population estimate of beluga whales in the Sakhalin-Amur area is 2,891 whales, and the best population estimate (including a correction factor for whales not available to be viewed during the survey) is 3,961 whales (Reeves et al., 2011). NMFS recognizes that there is very little documented information about historical abundance levels of beluga whales in the Sakhalin-Amur area. The best available information on historical abundance indicates that there were 7,000 to 10,000 beluga whales in the Sakhalin-Amur area in 1989 (Berzin and Vladimirov, 1989). Because the correction factor used in the 1989 survey was higher than the correction factor used in the 2009–2010 surveys, direct comparison of these surveys is not appropriate. However, NMFS believes that these population estimates provide substantial information indicating that the population of the beluga whales in the Sakhalin Bay-Amur River area may have declined from historical levels and a depleted designation therefore may be warranted. NMFS will further examine the extent of population decline during the status review.

In addition to abundance estimates, the petition contains information on factors contributing to the decline of the Sakhalin Bay Amur-River population of beluga whales, including: Large-scale commercial hunting from 1915–1963; unsustainable removal quotas; hunting permits; incidental mortality from fishing operations; accidental drowning during live-capture operations; vessel strikes; and other anthropogenic threats. While the threat of large-scale commercial hunting to the population has diminished, NMFS acknowledges that the petition provides information demonstrating that other threats to the population persist. Information readily available in our files confirms the petition's assertion that whales are removed from this population for public display; the effect of this activity on the population's abundance will be evaluated during the status review. In addition, although NMFS recognizes that there is little information available on the number of whales taken from this population incidentally, our files indicate that other sources of human-caused serious injury or mortality cannot be fully discounted or assumed to be zero (NMFS Final Environmental Assessment 2013). NMFS will further examine threats to the population's status during the status review.

Petition Finding

Based on our analysis of the information provided in the petition and its references, the public comments received, and information readily available in our files, NMFS finds that the petition presents substantial information indicating that the petitioned action may be warranted and will initiate a status review.

Information Solicited

To ensure that the status review is based on the best scientific information available, we are soliciting scientific information relevant to the status of the Sakhalin Bay-Amur River beluga whales from the public, including individuals and organizations concerned with the conservation of marine mammals, persons in industry which may be affected by the determination, and academic institutions. Specifically, we are soliciting information related to (1) the identification of Sakhalin Bay-Amur River beluga whales as a stock, (2) the historical or current abundance of this group, and (3) factors that may be affecting the group.

References Cited

A complete list of references is available upon request to the Office of Protected Resources (see **ADDRESSES**).

Dated: July 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–18225 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140214139–4139–01]

RIN 0648–BD91

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Regulatory Amendment 21

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed changes to management measures; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Regulatory Amendment 21 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 21), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, Regulatory Amendment 21 would modify the definition of the overfished threshold for red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack. The purpose of Regulatory Amendment 21 is to prevent snapper-grouper stocks with low natural mortality rates from frequently alternating between overfished and rebuilt conditions due to natural variation in recruitment and other environmental factors.

DATES: Written comments must be received on or before September 2, 2014.

ADDRESSES: You may submit comments on the proposed changes to management measures, identified by ''NOAA–NMFS–2014–0039,'' by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2014–0039,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Regulatory Amendment 21, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305, or email: *kate.michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic Region is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Management Measures Contained in Regulatory Amendment 21

Regulatory Amendment 21 would redefine the overfished threshold for red snapper, blueline tilefish, gag, black grouper, yellowtail snapper, vermilion snapper, red porgy, and greater amberjack as 75 percent of spawning stock biomass at maximum sustainable yield (SSB_{MSY}). The minimum stock size threshold (MSST) is used to determine if a species is overfished. The MSST for the species in this amendment is a function of the natural mortality rate (M) where MSST = 1–M *SSB_{MSY} (spawning stock biomass of the stock when it is rebuilt). When the natural mortality rate is small (less than 0.25), as is the case for these species, there is little difference between the current threshold for determining when a stock is overfished (MSST) and when the stock is rebuilt (SSB_{MSY}). Thus, for species like these which have a low rate of natural mortality, even small fluctuations in biomass due to natural conditions rather than fishing mortality may cause a stock to be classified as overfished. When a species is identified as overfished, the Magnuson-Stevens Act requires that a plan be implemented to rebuild the stock.

Based on the current definition of MSST, these species could unnecessarily be classified as overfished. An overfished determination could result in lost fishing opportunities for these species if more stringent harvest restrictions were to be implemented. Regulatory Amendment 21 would redefine MSST for these species as 75 percent of SSB_{MSY}, which would help prevent overfished designations when small drops in biomass are due to natural variation in recruitment or other environmental variables such as storms, and extreme water temperatures, and ensure that rebuilding plans are applied to stocks when truly appropriate.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Regulatory Amendment 21, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

The proposed changes to the management measures have been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The proposed changes to management measures would directly apply to businesses in the finfish fishing industry (NAICS 114111) that participate in the South Atlantic snapper-grouper fishery. According to Small Business Act Size Standards, a business in the finfish fishing industry is small if its annual receipts are less than $20.5 million. SBA adjusted the size standard for finfish fishing (NAICS 114111) from $19 million to $20.5 million to account for inflation and the adjusted size standard went into effect on July 14, 2014.

Every commercial fishing vessel in the snapper-grouper fishery must have a valid South Atlantic commercial snapper-grouper permit, which is a limited access permit for either an unlimited quantity of pounds per trip (a South Atlantic Snapper-Grouper Unlimited Permit) or up to 225 lb (102.1 kg) per trip (a 225-lb (102.1-kg) trip-limited permit). As of March 28, 2014, there were 542 valid South Atlantic Snapper-Grouper Unlimited Permits and 112 valid 225-lb (102.1-kg) trip-limited permits. It is from those permit figures that up to 542 small businesses with South Atlantic Snapper-Grouper Unlimited Permits and up to 112 small businesses with 225-lb (102.1-kg) trip-limited permits could be affected by the proposed changes.

These proposed changes to management measures would not impose additional reporting, record-keeping requirements, or other regulatory requirements on small businesses. The proposed changes would solely redefine the overfished threshold for eight stocks, and there would be no changes to current regulations that manage those stocks. Consequently, there would be no direct economic impact on small businesses. However, the proposed changes would reduce the likelihood of future adverse, possibly significant, economic impacts on a substantial number of small businesses caused by unnecessary regulatory actions that reduce small businesses' annual landings of and revenues from those eight stocks.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–18092 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140616510–4510–01]

RIN 0648–BE33

Fisheries of the Northeastern United States; Summer Flounder Fishery; Notice of a Control Date for the Purpose of Limiting Entry to the Summer Flounder Fishery; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: At the request of the Mid-Atlantic Fishery Management Council, this notice announces a control date that may be used to limit the number of participants in the commercial summer flounder fishery. The control date is intended to help the Council to identify latent effort in the summer flounder fishery. NMFS intends this notice to promote awareness of possible rulemaking, alert interested parties of potential eligibility criteria for future access, and discourage speculative entry into and/or investment in the summer flounder fishery while the Mid-Atlantic Fishery Management Council and NMFS consider if and how participation in the summer flounder fishery should be controlled. We are soliciting comments on this action.

DATES: August 1, 2014 shall be known as the ''control date'' for the summer flounder fishery, and may be used as a reference date for future management measures related to the maintenance of a fishery with characteristics consistent with the Council's objectives and applicable Federal laws. Written comments must be received on or before September 2, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0074 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0074,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Summer Flounder Control Date.''

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. We may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). We accept attachments to electronic comments only in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: In 1988, NMFS implemented the Summer Flounder Fishery Management Plan (FMP) to manage summer flounder following a decline in summer flounder abundance. Regulations for the summer flounder fishery are found at 50 CFR part 648, subpart G. The summer flounder fishery is composed of a limited access commercial fishery and an open access recreational fishery. A previous control date for the summer flounder fishery was established on January 26, 1990, shortly after the implementation of the FMP, and in anticipation of management measures implemented as part of Amendment 2 to the FMP. Amendment 2 included implementation of a moratorium on new permits and quotas for the summer flounder fishery.

On June 16, 2014, the Mid-Atlantic Fishery Management Council requested that NMFS publish this control date for the summer flounder fishery. This new control date would apply to participants in the commercial summer flounder fishery. The owner or operator of a vessel that landed any summer flounder between January 26, 1985, and January 26, 1990, was able to qualify for a Federal limited access summer flounder permit under Amendment 2. Because of the broad initial requirements of the commercial moratorium permit, the Council is concerned that there is latent effort in the commercial summer flounder fishery. This Advance Notice of Proposed Rulemaking is intended to help the Council determine more accurate information on effort in the summer flounder fishery while the Council prepares for future amendments to the FMP. The date upon which this notice is published shall be known as the ''control date,'' which is intended to distinguish established participation from latent or speculative effort in the fishery.

This notification establishes August 1, 2014, as the new control date for potential use in determining historical or traditional participation in the summer flounder fishery. Establishing a control date does not commit the Council or NMFS to develop any particular management regime or criteria for participation in this fishery. In the future, the Council may choose a different control date, or a management program that does not make use of any control date. Any future action by NMFS will be taken pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. NMFS is soliciting comment on the control date, latent effort and limiting accessing in the summer flounder fishery.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the summer flounder fishery.

This notification and control date do not impose any legal obligations, requirements, or expectations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–18094 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 79, No. 148
Friday, August 1, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC51

Extension of Comment Period on the Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directive; Extension of comment period.

SUMMARY: The Forest Service published a notice in the **Federal Register** on May 6, 2014, initiating a 90-day comment period on the Proposed Directive on Groundwater Resource Management, Forest Service Manual 2560. The closing date for that 90-day comment period is August 4, 2014. The Agency is extending the comment period; therefore, the comment period has been extended to September 3, 2014.

DATES: Comments must be received by September 3, 2014.

ADDRESSES: Send comments electronically by following the instructions at the Federal eRulemaking portal at *http://www.regulation.gov.* Comments may also be submitted by electronic mail to *fsm2500@fs.fed.us* or by mail to Groundwater Directive Comments, USDA Forest Service, Attn: Rob Harper—WFWARP, 201 14th Street SW., Washington, DC 20250. If comments are sent electronically, the public is requested not to send duplicate comments by mail. Please confine comments to issues pertinent to the proposed directive; explain the reasons for any recommended changes; and, where possible, refer to the specific wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect the comments received on the proposed directive at the USDA Forest Service Headquarters, located in the Yates Federal Building at 201 14th Street SW., Washington, DC, on regular business days between 8:30 a.m. and 4:30 p.m. Those wishing to inspect the comments are encouraged to call ahead at (202) 205–0967 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Troy Thompson, Watershed, Fish, Wildlife, Air and Rare Plants Staff and Minerals and Geology Management Staff, (414) 297–3622. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to amend its internal Agency directives for Watershed and Air Management to establish direction for management of groundwater resources on National Forest System (NFS) lands as an integral component of watershed management. Specifically, the proposed amendment would provide direction on the consideration of groundwater resources in agency activities, approvals, and authorizations; encourage source water protection and water conservation; establish procedures for reviewing new proposals for groundwater withdrawals on NFS lands; require the evaluation of potential impacts from groundwater withdrawals on NFS resources; and provide for measurement and reporting for some larger groundwater withdrawals. This proposed amendment would supplement existing special uses and minerals and geology directives to address issues of groundwater resource management and would help ensure consistent and adequate analyses for evaluating potential uses of NFS lands that could affect groundwater resources. Public comment is invited and will be considered in development of the final directive. The Forest Service wants to ensure that there is sufficient time for potentially affected parties, including States, to comment. Thus the Agency is providing an extended comment period for the proposed directive.

In addition, the Forest Service may host meetings and/or webinars as needed on the proposed directive to present information and answer questions on the proposed policy and the comment process during the comment period. Specific information regarding the dates and times of the webinar will be announced by news release and at the following Web site: *http://www.fs.fed.us/geology/groundwater.* A recording of the webinar may also be posted on the Web site.

Reviewers may obtain a copy of the proposed directive from the Forest Service Minerals and Geology Management Staff Web site, *http://www.fs.fed.us/geology/groundwater,* or from the Regulations.gov Web site, *http://www.regulations.gov.*

Dated: July 29, 2014.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2014–18219 Filed 7–31–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Umatilla National Forest, Supervisor's Office; Oregon; Kahler Dry Forest Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an Environmental Impact Statement (EIS) to analyze impacts for vegetative treatment in the Kahler Creek area of the Heppner Ranger District of the Umatilla National Forest.

The district has started an Environmental Assessment (EA) for the project, but has determined that an Environmental Impact Statement would be more appropriate for this project. Scoping for the EA was open for 30 days in March 2013 and numerous comments were received from the public. These comments were used to form the issues for the EA, and these issues will be carried over to the EIS.

DATES: The draft environmental impact statement is expected September 2014 and the final environmental impact statement is expected February 2015.

FOR FURTHER INFORMATION CONTACT: Ann Niesen, District Ranger, Heppner Ranger District, P.O. Box 7, Heppner, OR 97836.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Fire suppression and past harvest throughout the Kahler project area have caused a shift in stand density, structure, and species composition away from the range of variability historically associated with dry forests. In turn, this shift has altered the availability and distribution of habitat for terrestrial wildlife species, including Forest Plan Management Indicator Species and Region 6 Sensitive Wildlife Species. There is a shortage of old forest single stratum (OFSS) forest structure, which is characterized by a single overstory layer, with medium to large trees of early successional tree species such as ponderosa pine or western larch. Currently, only 6% of the forested land within the project area is classified as OFSS, whereas historically 40–60% of the forest would have been in this condition.

- Restore, maintain, and promote single stratum old forest structure, moving the area toward its historical range of structure, density, and species composition.
- Maintain and promote old trees (> 150 years old) throughout the project area.
- Provide a supply of commercial forest products to support and maintain local infrastructure.
- Reduce insect and disease risk, where currently outside the historical range, to dry upland forest stands and associated wildlife.
- Reestablish the character of a frequent fire regime to the landscape to aid in maintaining open stand conditions and fire-tolerant species, improve big game forage, and reduce conifer encroachment.
- Reduce encroachment of western juniper into areas where it did not historically occur to improve big game forage, the quality of grassland and steppe-shrubland habitat for wildlife, the diversity and productivity of riparian plant communities, and water availability for native vegetation.
- Provide, develop, and enhance effective and well-distributed habitats throughout the Forest for all existing native and desired nonnative vertebrate wildlife species, particularly those associated with late and old structural stages in dry upland forest stands (e.g. white-headed and Lewis' woodpecker).
- Provide for a high level of potential habitat effectiveness at the landscape scale to meet the needs of big game in the winter range management area.
- Address habitat issues in big game winter range areas including the existing extent and distribution of cover, the quantity and quality of forage, and disturbance associated with roads and trails open to full-sized vehicles and OHVs.

Proposed Action

The Kahler project proposes to use variable density thinning with skips and gaps to reduce tree density, shift species composition, and promote old forest structure across approximately 11,000 acres within the project area. There will be an option to remove select young (<150 years old) grand fir and Douglas-fir trees that are 21 inches or greater in diameter and interacting with the crown of a desirable leave tree. Tree species preference will be for ponderosa pine and western larch. Diseased trees and those with severe mistletoe infestations will be targeted for removal where they are outside historical ranges. Trees may be removed using ground-based, skyline, or helicopter methods. Minimum snag and downed wood standards will be maintained. Thinning of western juniper (7 inches to 21 inches in diameter) may occur within commercial harvest units in order to reduce and/or eliminate its encroachment into upland forest stands and Class 4 riparian areas where it did not historically occur in order to maintain or improve the quality of upland forest habitat, the diversity and productivity of riparian plant communities, and water availability for native vegetation. The Proposed Action includes five amendments to the Umatilla Land and Resource Management Plan.

Possible Alternatives

The Forest Service developed 3 alternatives in response to issues raised by the public:

- No Action
- Proposed Action
- Alternative to the Propsed Action

Responsible Official

Kevin Martin, Forest Supervisor of the Umatilla National Forest will be the responsible official for making the decision and providing direction for the analysis.

Nature of Decision To Be Made

The responsible official will decide whether or not to authorize the proposal.

Preliminary Issues

The Forest Service has identified four issues from previous scoping:

- Issue 1: Thinning, juniper removal, prescribe fire and use of the road system have the potential to impact the quality, quantity and distribution (across the landscape and adjacent to open roads) of big game habitat within the analysis area. As a result, population levels and herd distribution may be impacted.
- Issue 2: Thinning would impact the quantity and distribution of dense multi-strata ponderosa pine and mixed conifer stands at the stand and larger landscape scale in the dry upland forest Potential Vegetation Group (Powell et al, 2007). Thinning may reduce the habitat for dense, multi-strata associated species of wildlife such as pileated woodpecker and other wildlife that utilize dense mixed conifer and ponderosa pine stands.
- Issue 3: Use of temporary roads and re-opening of existing closed roads has potential to increase sedimentation.
- Issue 4: Mechanical treatments in Class 4 RHCA's could increase sedimentation.

Addresses

John Evans, Project Manager, 72510 Coyote Road, Pendleton, OR 97801.

Ann Niesen, District Ranger, Heppner Ranger District, P.O. Box 7, Heppner, OR 97836.

Dated: July 18, 2014.

Kevin Martin,

Forest Supervisor.

[FR Doc. 2014–18142 Filed 7–31–14; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a planning meeting the Nevada Advisory Committee (Committee) to the Commission will be held on Thursday, August 21, 2014, at the Clark County Library, 1401 E. Flamingo Road, Las Vegas, NV 89119.

The meeting is scheduled to begin at 1:00 p.m. and adjourn at approximately 4:00 p.m. The purpose of the meeting is for the Committee to receive a briefing on the militarization of the police and to plan project activity.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by September 22, 2014. The address is Western Regional Office,

U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Civil Rights Analyst, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *atrevino@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Western Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated: July 29, 2014.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–18132 Filed 7–31–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Recreational Information Program, Hawaii Mail-in Survey for Shore Fishing Effort.

OMB Control Number: 0648–xxxx.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 1,200.

Average Hours per Response: 20 minutes.

Burden Hours: 400.

Needs and Uses: This request is for a new information collection.

Marine recreational anglers are surveyed to collect catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of mail surveys, telephone surveys and on-site intercept surveys with recreational anglers. Amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require the development of an improved data collection program for recreational fisheries. To meet these requirements, NOAA Fisheries has designed and tested new approaches for sampling and surveying recreational anglers.

A mail survey of all anglers within a household will be used to collect recent fishing effort data including gear and methods of fishing from shore. The main purpose will be to compare to on-site roving counts of shore fishing effort during the same period and to produce adjustment factors for under-coverage of the roving on-site survey (the roving effort survey does not require response from the public). The survey scope is Oahu, during a single 2-month sampling wave (current schedule September–October, 2014). The effort surveys will use catch data from the ongoing shore angler intercept survey to produce estimates of total catch, harvested catch, and live released catch.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Dated: July 28, 2014

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–18130 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–65–2014]

Approval of Subzone Status, Panasonic System Communications Company of North America, Rockaway, New Jersey

On June 2, 2014, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the New Jersey Department of State, grantee of FTZ 44, requesting subzone status subject to the existing activation limit of FTZ 44 on behalf of Panasonic System Communications Company of North America in Rockaway, New Jersey.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (79 FR 32691–32692, 06–06–2014). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 44G is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 44's 447.5-acre activation limit.

Dated: July 25, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–18250 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty

order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2014, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request A Review: Not later than the last day of August 2014,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period of review
Antidumping Duty Proceedings	
Germany:	
Seamless Line and Pressure Pipe A–428–820	8/1/13–7/31/14
Sodium Nitrite A–428–841	8/1/13–7/31/14
Italy:	
Granular Polytetrafluoroethylene Resin A–475–703	8/1/13–7/31/14
Japan:	
Brass Sheet & Strip A–588–704	8/1/13–7/31/14
Tin Mill Products A–588–854	8/1/13–7/31/14
Malaysia:	
Polyethylene Retail Carrier Bags A–557–813	8/1/13–7/31/14
Mexico:	
Light-Walled Rectangular Pipe and Tube A–201–836	8/1/13–7/31/14
Romania:	
Carbon and Alloy Seamless Standard, Line, And Pressure Pipe (Under 4 ½ Inches) A–485–805	8/1/13–7/31/14
Republic of Korea:	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Large Power Transformers A–580–867	8/1/13–7/31/14
Light-Walled Rectangular Pipe and Tube A–580–859	8/1/13–7/31/14
Socialist Republic of Vietnam:	
Frozen Fish Fillets A–552–801	8/1/13–7/31/14
Thailand:	
Polyethylene Retail Carrier Bags A–549–821	8/1/13–7/31/14
The People's Republic of China:	
Floor-Standing, Metal-Top Ironing Tables and Parts Thereof A–570–888	8/1/13–7/31/14
Laminated Woven Sacks A–570–916	8/1/13–7/31/14
Light-Walled Rectangular Pipe and Tube A–570–914	8/1/13–7/31/14
Petroleum Wax Candles A–570–504	8/1/13–7/31/14
Polyethylene Retail Carrier Bags A–570–886	8/1/13–7/31/14
Sodium Nitrite A–570–925	8/1/13–7/31/14
Steel Nails A–570–909	8/1/13–7/31/14
Sulfanilic Acid A–570–815	8/1/13–7/31/14
Tetrahydrofurfuryl Alcohol A–570–887	8/1/13–7/31/14
Tow-Behind Lawn Groomers and Parts Thereof A–570–939	8/1/13–7/31/14
Woven Electric Blankets A–570–951	8/1/13–7/31/14
Ukraine:	
Silicomanganese A–823–805	8/1/13–7/31/14
Countervailing Duty Proceedings	
Republic of Korea:	
Stainless Steel Sheet and Strip in Coils C–580–835	1/1/13–12/31/13
The People's Republic of China:	
Laminated Woven Sacks C–570–917	1/1/13–12/31/13
Light-Walled Rectangular Pipe and Tube C–570–915	1/1/13–12/31/13
Sodium Nitrite C–570–926	1/1/13–12/31/13
Tow-Behind Lawn Groomers and Parts Thereof C–570–940	1/1/13–12/31/13
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews.

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov*.[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2014. If the Department does not receive, by the last day of August 2014, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 24, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–18253 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating the five-year review (''Sunset Review'') of the antidumping and countervailing duty (''AD/CVD'') orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* (August 1, 2014).

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Review(s) of the following antidumping and countervailing duty order(s):

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–941	731–TA–1154	China	Kitchen Appliance Shelving and Racks (1st Review).	Charles Riggle, (202) 482–0650.
C–570–942	701–TA–458	China	Kitchen Appliance Shelving and Racks (1st Review).	David Goldberger, (202) 482–4136.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: ''*http://enforcement.trade.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''), can be found at 19 CFR 351.303.[1]

Revised Factual Information Requirements

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after August 16, 2013.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: The definition of factual information (19 CFR 351.102(b)(21), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Extension of Time Limits,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under part 351 of the Department's regulations expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[4]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

[4] *See* 19 CFR 351.218(d)(1)(iii).

requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 24, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–18259 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814]

Chlorinated Isocyanurates From Spain: Final Results No Shipment Determination; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 28, 2014, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from Spain covering the period June 1, 2012 through May 31, 2013.[1] The period of review (POR) is June 1, 2012, through May 31, 2013. The review covers one producer/exporter of the subject merchandise, Ercros S.A. The Department gave interested parties an opportunity to comment on the *Preliminary Results,* but we received no comments. Hence, these final results are unchanged from the *Preliminary Results,* and we continue to find that Ercros S.A. did not have reviewable entries during the period of review (''POR'').

DATES: *Effective Date:* August 1, 2014.

FOR FURTHER INFORMATION CONTACT: Sean Cary, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3964 or (202) 482–3586, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2014, the Department published the *Preliminary Results* of the instant review.[2] Ercros S.A. submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.[3] In addition, in response to the Department's query, U.S. Customs and Border Protection (''CBP'') did not provide any evidence that contradicted Ercros S.A.'s claim of no shipments.[4] The Department received no comments from interested parties concerning the results of the CBP query. Therefore, based on Ercros S.A.'s certification and our analysis of CBP information, we preliminarily determined that Ercros S.A. did not have any reviewable entries during the POR.[5] We invited interested parties to comment on the *Preliminary Results.*[6] We received no comments from interested parties.

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The products covered by the order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cynauric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (Cl3(NCO)3), (2) sodium dichloroisocyanurate (dihydrate) (NaCl2(NCO)3 2H2O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl2(NCO)3). Chlorinated isocyanurates are available in powder, granular, and tableted forms. The order covers all chlorinated isocyanurates. Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Determination of No Shipments

As explained above, in the *Preliminary Results,* the Department found that Ercros S.A. did not have reviewable entries during the POR.[7] Also in the *Preliminary Results,* the Department stated that consistent with its recently announced refinement to its assessment practice, it is not appropriate to rescind the review with respect to Ercros S.A., but rather to complete the review with respect to Ercros S.A. and issue appropriate instructions to CBP based on the final results of this review.[8]

After issuing the *Preliminary Results,* the Department received no comments from interested parties, nor has it received any information that would cause it to revisit its preliminary determination. Therefore, for these final results, the Department continues to find that Ercros S.A. did not have any reviewable entries during the POR.

Assessment Rates

The Department determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[9] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. Additionally, consistent with the Department's refinement to its assessment practice, because the Department determined that Ercros S.A. had no shipments of subject merchandise during the POR, any suspended entries that entered under Ercros S.A.'s antidumping duty case number (*i.e.,* at that exporter's rate) will be liquidated at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[10]

[1] *See Chlorinated Isocyanurates from Spain: Preliminary No Shipments Determination of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 17502 (March 28, 2014) (*Preliminary Results*).

[2] *Id.*

[3] *See* letter from Ercros S.A., ''Chlorinated Isocyanurates from Spain/Ercros S.A./Certification of No Shipments and Request to Rescind Review,'' dated September 13, 2013.

[4] *See Preliminary Results.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010) (collectively, *Magnesium Metal From the Russian Federation*).

[9] *See* 19 CFR 351.212(b).

[10] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of the administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For Ercros S.A., which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to Ercros S.A. in the most recently completed review of the company; (2) for other manufacturers and exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.83 percent, the all-others rate established in the investigation.[11]

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

[11] *See Chlorinated Isocyanurates from Spain: Notice of Final Determination of Sales at Less Than Fair Value,* 70 FR 24506 (May 10, 2005).

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 28, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–18230 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 140723615–4615–01]

RIN 0693–ZB08

Award Competitions for Hollings Manufacturing Extension Partnership (MEP) Centers in the States of Colorado, Connecticut, Indiana, Michigan, New Hampshire, North Carolina, Oregon, Tennessee, Texas and Virginia

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce (DoC).

ACTION: Notice of funding availability.

SUMMARY: NIST invites applications from eligible applicants in connection with NIST's funding of up to ten (10) separate MEP cooperative agreements for the operation of an MEP Center in the designated States' service areas and in the funding amounts identified in Section II.2. of the corresponding Announcement of Federal Funding Opportunity (FFO). NIST anticipates awarding one (1) cooperative agreement for each of the identified States. The objective of the MEP Center Program is to provide manufacturing extension services to primarily small and medium-sized manufacturers within the State designated in the applications. The selected MEP Centers will become part of the MEP national system of extension service providers, currently comprised of more than 400 Centers and field offices located throughout the United States and Puerto Rico.

DATES: Electronic applications must be received no later than 11:59 p.m. Eastern Time on October 15, 2014. Applications received after the deadline will not be reviewed or considered. The approximate start date for awards under this notice and the corresponding FFO is expected to be July 1, 2015.

ADDRESSES: Applications must be submitted electronically through *www.Grants.gov.* NIST will not accept applications submitted by mail, facsimile, or by email. *See* Section IV. in the Full Announcement Text of the corresponding FFO.

FOR FURTHER INFORMATION CONTACT: Administrative, budget, cost-sharing, and eligibility questions and other programmatic questions should be directed to Diane Henderson at Tel: (301) 975–5105; Email: *diane.henderson@nist.gov;* Fax: (301) 963–6556. Grants Administration questions should be addressed to: Jannet Cancino, Grants and Agreements Management Division, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1650, Gaithersburg, MD 20899–1650; Tel: (301) 975–6544; Email: *jannet.cancino@nist.gov;* Fax: (301) 926–6319. For assistance with using *Grants.gov* contact Christopher Hunton at Tel: (301) 975–5718; Email: *christopher.hunton@nist.gov;* Fax: (301) 975–8884. Questions submitted to NIST/MEP may be posted as part of an FAQ document, which will be periodically updated on the MEP Web site at *http://www.nist.gov/mep/ffo_state-competitions.cfm.*

SUPPLEMENTARY INFORMATION:

Electronic access: Applicants are strongly encouraged to read the corresponding Federal Funding Opportunity (FFO) announcement available at *www.grants.gov* for complete information about this program, including all program requirements and instructions for applying electronically. Paper applications or electronic applications submitted other than through *www.grants.gov* will not be accepted. The FFO may be found by searching under the Catalog of Federal Domestic Assistance Name and Number provided below.

Authority: 15 U.S.C. 278k, as implemented in 15 CFR part 290.

Catalog of Federal Domestic Assistance Name and Number: Manufacturing Extension Partnership—11.611.

Webinar Information Session: NIST/MEP will hold an information session for organizations that are considering applying for this funding opportunity. This webinar will provide general information regarding MEP and offer general guidance on preparing proposals. NIST/MEP staff will be available at the webinar to answer general questions. During the webinar, proprietary technical discussions about specific project ideas will not be permitted. Also, NIST/MEP staff will not critique or provide feedback on any project ideas during the webinar or at any time before submission of a proposal to MEP. However, NIST/MEP staff will provide information about the MEP eligibility and cost-sharing

requirements, evaluation criteria and selection factors, selection process, and the general characteristics of a competitive MEP proposal during this webinar. The webinar will be held approximately fourteen (14) business days after posting of the FFO and publication of this notice. The exact date and time of the webinar will be posted on the MEP Web site at *http://www.nist.gov/mep/ffo_state-competitions.cfm.* The webinar will be recorded, and a link to the recording will be posted on the MEP Web site. In addition, the webinar presentation will be available after the webinar on the MEP Web site. Organizations wishing to participate in the webinar must register in advance by contacting MEP by email at *mepffo@nist.gov.* Participation in the webinar is not required in order for an organization to submit an application pursuant to this notice and the corresponding FFO.

Program Description: NIST invites applications from eligible applicants in connection with NIST's funding up to ten (10) separate MEP cooperative agreements for the operation of an MEP Center in the designated State service areas and in the funding amounts identified in Section II.2. of the corresponding FFO. NIST anticipates awarding one (1) cooperative agreement for each of the identified States. The objective of the MEP Center Program is to provide manufacturing extension services to primarily small and medium-sized manufacturers within the State designated in the applications. The selected MEP Centers will become part of the MEP national system of extension service providers, currently comprised of more than 400 Centers and field offices located throughout the United States and Puerto Rico.

See the corresponding FFO for further information about the Manufacturing Extension Partnership and the MEP National Network.

The MEP Program is not a Federal research and development program. It is not the intent of this program that awardees will perform systematic research.

To learn more about the MEP Program, please go to *http://www.nist.gov/mep/.*

Funding Availability: NIST anticipates funding ten (10) MEP Center awards with an initial five-year period of performance in accordance with the multi-year funding policy described in Section II.3. of the corresponding FFO. Initial funding for the projects listed in this notice and the corresponding FFO is contingent upon the availability of appropriated funds.

Below are the ten (10) States identified for funding as part of this notice and the corresponding FFO:

MEP center location and assigned geographical service area (by state)	Annual federal funding for each year of the award	Total federal funding for 5 year award period
Colorado	$1,668,359	$8,341,795
Connecticut	1,476,247	7,381,235
Indiana	2,758,688	13,793,440
Michigan	4,229,175	21,145,875
New Hampshire	628,176	3,140,880
North Carolina	3,036,183	15,180,915
Oregon	1,792,029	8,960,145
Tennessee	1,976,348	9,881,740
Texas	6,700,881	33,504,405
Virginia	1,722,571	8,612,855

Multi-Year Funding Policy. When an application for a multi-year award is approved, funding will usually be provided for only the first year of the project. Recipients will be required to submit detailed budgets and budget narratives prior to the award of any continued funding. Continued funding for the remaining years of the project will be awarded by NIST on a non-competitive basis, and may be adjusted higher or lower from year-to-year of the award, contingent upon satisfactory performance, continued relevance to the mission and priorities of the program, and the availability of funds. Continuation of an award to extend the period of performance and/or to increase or decrease funding is at the sole discretion of NIST.

Potential for Additional 5 Years. Initial awards issued pursuant to this notice and the corresponding FFO are expected to be for up to five (5) years with the possibility for NIST to renew for an additional 5 years at the end of the initial award period. The review processes in 15 CFR 290.8 will be used as part of the overall assessment of the recipient, consistent with the potential long-term nature and purpose of the program. In considering renewal for a second five-year, multi-year award term, NIST will evaluate the results of the annual reviews and the results of the 3rd Year peer-based Panel Review findings and recommendations as set forth in 15 CFR 290.8, as well as the Center's progress in addressing findings and recommendations made during the various reviews. The full process is expected to include programmatic, policy, financial, administrative, and responsibility assessments, and the availability of funds, consistent with Department of Commerce and NIST policies and procedures in effect at that time.

Kick-Off Conferences

Each recipient will be required to attend a kick-off conference, which will be held at NIST at the beginning of the project period, to help ensure that the MEP Center operator has a clear understanding of the program and its components. The kick-off conference will take place at NIST/MEP headquarters in Gaithersburg, MD, during which time NIST will: (1) Orient MEP Center key personnel to the MEP program; (2) explain program and financial reporting requirements and procedures; (3) identify available resources that can enhance the capabilities of the MEP Center; and (4) develop a detailed five-year operating plan. NIST/MEP anticipates an additional set of site visits at the MEP Center and/or telephonic meetings with the recipient to finalize the five-year operating plan.

The kick-off conference will take up to approximately 5 days and must be attended by the MEP Center Director, along with up to two additional MEP Center employees. Applicants must include travel and related costs for the kick-off conference as part of the budget for year one (1), and these costs should be reflected in the SF–424A covering the first four (4) years of the project. (*See* Section IV.2.a.(2). of the corresponding FFO.) These costs must

also be reflected in the budget table and budget narrative for year 1, which is submitted as part of the budget tables and budget narratives section of the Technical Proposal. (*See* Section IV.2.a.(6).(d). of the corresponding FFO.)

MEP System-Wide Meetings

NIST/MEP typically organizes system-wide meetings four times a year (generally on a quarterly basis) in an effort to share best practices, new and emerging trends, and additional topics of interest. These meetings take place at NIST/MEP headquarters in Gaithersburg, MD and typically involve 3–4 days of resource time and associated travel costs. The MEP Center Director must attend these meetings, along with up to two additional MEP Center employees.

Applicants must include travel and related costs for four quarterly MEP system-wide meetings in each of the five (5) project years (4 meetings per year; 20 total meetings over five-year award period). These costs must be reflected in the SF–424A covering the first four (4) years of the project (*See* Section IV.2.a.(2). of the corresponding FFO) and in the SF–424A covering year five (5) of the project (*See* Section IV.2.a.(10). of the corresponding FFO). These costs must also be reflected in the budget tables and budget narratives for each of the project's five (5) years, which are submitted in the budget tables and budget narratives section of the Technical Proposal. (*See* Section IV.2.a.(6).(d). of the corresponding FFO).

Cost Share or Matching Requirement: Non-Federal cost sharing of at least 50 percent of the total project costs is required for each of the first through the third year of the award, with an increasing minimum non-federal cost share contribution beginning in year 4 of the award as follows:

Award year	Maximum NIST share	Minimum non-federal share
1–3	1/2	1/2
4	2/5	3/5
5 and beyond	1/3	2/3

Non-Federal cost sharing is that portion of the project costs not borne by the Federal Government. The applicant's share of the MEP Center expenses may include cash, services, and third party in-kind contributions, as described at 15 CFR 14.23 or 24.24, as applicable, and in the MEP program regulations at 15 CFR 290.4(c). No more than 50% of the applicant's total non-Federal cost share for any year of the award may be from third party in-kind contributions of part-time personnel, equipment, software, rental value of centrally located space, and related contributions, per 15 CFR 290.4(c)(5). The source and detailed rationale of the cost share, including cash, full- and part-time personnel, and in-kind donations, must be documented in the budget tables and budget narratives submitted with the application and will be considered as part of the review under the evaluation criterion found in Section V.1.c.i. of the corresponding FFO.

Recipients must meet the minimum non-federal cost share requirements for each year of the award as identified in the chart above. For purposes of the MEP Program, ''program income'' (as defined in 15 CFR 14.2(aa) and in 15 CFR 24.25(b), as applicable) generated by an MEP Center may be used by a recipient towards the required non-federal cost share under an MEP award.

Any cost sharing must be in accordance with the ''cost sharing or matching'' provisions of 15 CFR part 14, *Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations* or 15 CFR part 24, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,* as applicable.

As with the Federal share, any proposed costs included as non-Federal cost sharing must be an allowable/eligible cost under this program and the following applicable Federal cost principles: (1) Institutions of Higher Education: 2 CFR part 220 (OMB Circular A–21); (2) Nonprofit Organizations: 2 CFR part 230 (OMB Circular A–122); and (3) State, Local and Indian Tribal Governments: 2 CFR part 225 (OMB Circular A–87). Any proposed non-Federal cost sharing will be made a part of the cooperative agreement award and will be subject to audit if the project receives MEP funding.

Eligibility: The eligibility requirements given in this section will be used in lieu of those given in the MEP regulations found at 15 CFR part 290, specifically 15 CFR 290.5(a)(1). Each applicant for and recipient of an MEP award must be a U.S.-based nonprofit institution or organization. For the purpose of this notice and the corresponding FFO, nonprofit institutions include Section 501(c)(3) non-profit organizations, non-profit and State universities, non-profit community and technical colleges, and State, local or Tribal governments. Existing MEP awardees and new applicants who meet the eligibility criteria set forth in this section may apply. An eligible organization may work individually or may include proposed subawards to eligible organizations or proposed contracts with any other organization as part of applicant's proposal, effectively forming a team. However, as discussed in Section III.3.b. of the corresponding FFO, NIST generally will not fund applications that propose an organizational or operational structure that, in whole or in part, delegates or transfers to another person, institution, or organization the applicant's responsibility for core MEP Center management and oversight functions.

Application Requirements: Applications must be submitted in accordance with the requirements set forth in the corresponding FFO announcement.

Application/Review Information: The evaluation criteria, selection factors, and review and selection process provided in this section will be used for this competition in lieu of those provided in the MEP regulations found at 15 CFR part 290, specifically 15 CFR 290.6 and 290.7.

Evaluation Criteria: The evaluation criteria that will be used in evaluating applications and assigned weights, with a maximum score of 100, are listed below.

a. *Executive Summary and Project Narrative. (40 points).* NIST/MEP will evaluate the extent to which the applicant's Executive Summary and Project Narrative demonstrate how the applicant will efficiently and effectively establish an MEP Center and provide manufacturing extension services to primarily small and medium-sized manufacturers in the applicable State-wide geographical service area identified in Section II.2. of the

corresponding FFO. Reviewers will consider the following topics when evaluating the Executive Summary and Project Narrative:

i. *Market Understanding (10 points).* Reviewers will assess the strategy proposed for the Center to define the target market, understand the needs of manufacturers, with an emphasis on the small and medium-sized manufacturers, and to deliver appropriate services to meet identified needs. The following sub-topics will be evaluated and given equal weight:

(1) *Market Segmentation.* Reviewers will assess the extent to which the applicant understands the market of potential customers and the varying needs of different market segments. In addition to the core MEP segment of established small and medium-sized manufacturers with 25–250 employees, reviewers will assess the applicant's understanding as described in the proposal of non-traditional MEP customers such as rural, emerging, very small, or underserved manufacturers. Reviewers will evaluate the extent to which applicants:

- Delineate target service regions and manufacturers;
- make use of appropriate quantitative and qualitative data sources and market intelligence to support proposed strategies and approaches to defining and segmenting the market; and
- align priority industries and regions with other State and regional priorities and investments.

(2) *Needs Identification and Service Offerings.* Reviewers will assess the extent to which the applicant addresses the capabilities to provide services for both top line growth and bottom line improvement through:

- serving the State's manufacturing base, industry types, and technology requirements;
- leveraging new manufacturing technology, techniques, and processes usable by small and medium-sized manufacturers;
- meeting existing and emerging needs of State manufacturers;
- making use of multiple sources of qualitative and quantitative information to determine manufacturers' needs and how best to address them;
- making use of resources, tools and services appropriate for the targeted small and medium-sized manufacturers to meet identified needs of the State;
- incorporating a range of complementary service providers and partners to deliver broad expertise and maximum value to manufacturing clients; and
- describing plans to provide services to very small, rural, emergent, or underserved small and medium-sized manufacturers.

ii. *Center Strategy (10 points).* Reviewers will assess the applicant's strategy proposed for the Center to deliver services that meet manufacturers' needs and generate impact. Reviewers will assess the extent to which the applicant:

- Incorporates the market analysis described in criterion a.i.(1) above to inform strategies, products and services;
- defines a strategy for delivering services that balances market penetration with impact and revenue generation, addressing the needs of manufacturers, with an emphasis on the small and medium-sized manufacturers;
- defines the State ecosystem in which the Center will operate, including universities, community colleges, technology-based economic developers, and others; and
- supports achievements of the MEP mission and objectives while also satisfying the interests of other stakeholders, investors, and partners.

iii. *Business Model (20 points).* Reviewers will assess the applicant's proposed business model for the Center and its ability to execute the strategy proposed in criterion a.ii. above, based on the market understanding described in criterion a.i. above. The following sub-topics will be evaluated and given equal weight:

(1) *Approach to the Market.* Reviewers will assess the extent to which the proposed Center:

- Will reach State manufacturers;
- optimizes the use of delivery methods (direct delivery, third party, account management); and
- facilitates the engagement of manufacturers' leadership in strategic discussions related to new technologies, new products, and new markets.

(2) *Products and Services.* Reviewers will assess the extent to which the proposed Center will:

- Engage expertise both from within the Center and from subrecipients, contractors and strategic partners to make available a wide range of experts and services to manufacturers;
- deliver services to small and medium-sized manufacturers to encourage adoption of new technologies, development of new products, and sales of products in new markets;
- balance delivering process improvement services with services that will transform and grow manufacturers;
- deliver manufacturing technology and mechanisms for accelerating the adoption of technologies for both process improvement and new product adoption to small and medium-sized manufacturers; and
- support a job-driven training agenda with manufacturing clients, including: (a) Working with manufacturers to determine local or regional hiring needs; (b) coordinating with workforce partners and others to leverage training resources; (c) using data to inform program offerings; (d) promoting on-the-job training through clients and partners; (e) promoting a continuum of education and training leading to credential attainment and career advancement; and (f) measuring employment outcomes and taking action to improve.

(3) *Partnership Leverage and Linkages.* Reviewers will assess the extent to which the proposed Center will:

- Establish a sustainable business model, incorporating federal, state and local investment, small and medium-sized manufacturing clients, and other sources; and
- make use of effective resources or partnerships with third parties such as industry, universities, nonprofit economic development organizations, and State Governments likely to amplify the Center's capabilities for delivering growth services.

(4) *Performance Measurement and Metrics.* Reviewers will assess the extent to which the applicant's proposed approach would utilize a systematic approach to measuring performance that includes:

- client-based business results of importance to key stakeholder groups; and
- operational performance results sufficient for day-to-day management of the Center.

b. *Qualifications of the Applicant and Program Management (30 points; Sub-criterion i and ii will be weighted equally).* Reviewers will assess the ability of the key personnel and the applicant's management structure to deliver the program and services envisioned for the Center. Reviewers will consider the following topics when evaluating the qualifications of the applicant and of program management:

i. *Key Personnel and Organizational Structure.* Reviewers will assess the extent to which the:

- Proposed key personnel have the appropriate experience and education in manufacturing, outreach and partnership development to support achievements of the MEP mission and objectives;
- proposed key personnel have the appropriate experience and education to plan, direct, monitor, organize and

control the monetary resources of the proposed Center to achieve its business objectives and maximize its value;

• proposed management structure (leadership and governance) is aligned to support the execution of the strategy, products and services;

• proposed staffing plan flows logically from the specified approach to the market and products and service offerings;

• organizational roles and responsibilities of key personnel and staff are clearly delineated;

• proposed field staff structure sufficiently supports the geographic concentrations and industry targets for the region; and

• degree to which the Center's proposed oversight board meets the requirements of Section III.3.c. of the corresponding FFO or, if such a structure is not currently in place or is not expected to continue to meet these requirements at the time of the MEP award, a feasible plan is proposed for developing such an oversight board within 12 months of issuance of an MEP award (expected to be July 2015).

ii. *Program Management.* Reviewers will assess the extent to which the/an:

• Proposed methodology of program management and internal evaluation is likely to ensure effective operations and oversight and meet program and service delivery objectives;

• proposed performance measurements and metrics are aligned to support the execution of the proposed Center's strategy and business model;

• proposed approach aligns effectively with the proposed key personnel, staff and organizational structure; and

• applicant with past performance deficiencies under the MEP Program (as applicable) identifies the reasons for such performance deficiencies and provides a detailed course of action for ensuring better performance under a new MEP award, or the extent to which an applicant without performance deficiencies under an MEP award (as applicable) describes why such performance would continue under a new MEP award. Applicants without past performance under the MEP Program will not be penalized and will still be eligible to receive the maximum amount of points under this sub-criterion. (Specifically, for applicants with past performance under the MEP Program, each bulleted evaluation factor in this sub-criterion will be worth a maximum of 3.75 points (15 maximum points in total). For applicants without past performance under an MEP Program, each bulleted evaluation factor in this sub-criterion will be worth a maximum of 5 points (15 maximum points in total)).

c. *Budget Narrative and Financial Plan. (30 points; Sub-criterion i and ii will be weighted equally).* Reviewers will assess the suitability and focus of the applicant's five (5) year budget. The application will be assessed in the following areas:

i. *Plans for Meeting the Award's Non-Federal Cost Share Requirements.* Reviewers will assess the extent to which the:

• Applicant's funding commitments for cost share are identified and supported and demonstrate allowability, stability, and duration; and

• applicant clearly describes the total level of cost share and detailed rationale of the cost share, including cash and in-kind, within the proposed budget.

ii. *Financial Viability.* Reviewers will assess the extent to which:

• A reasonable ramp-up or scale-up scope and budget that has the Center fully operational by the 4th year of the project;

• the proposed projections for income and expenditures are allowable and appropriate for the scale of services that are to be delivered by the proposed Center and the service delivery model envisioned;

• the proposal's narrative for each of the budgeted items explains the rationale for each of the budgeted items, including assumptions the applicant used in budgeting for the Center;

• the overall proposed financial plan is sufficiently robust and diversified so as to support the long term sustainability of the Center; and

• the proposed financial plan is aligned to support the execution of the proposed Center's strategy and business model.

Selection Factors: The Selection Factors for this notice and the corresponding FFO are as follows:

a. The availability of Federal funds;

b. Relevance of the proposed project to MEP program goals and policy objectives;

c. Reviewers' evaluations, including technical comments;

d. The need to assure appropriate distribution within the designated State; and/or

e. Whether the project duplicates other projects funded by DoC or by other Federal agencies.

Review and Selection Process:

(1) *Initial Administrative Review of Applications.* An initial review of timely received applications will be conducted to determine eligibility, completeness, and responsiveness to this notice and the corresponding FFO and the scope of the stated program objectives. Applications determined to be ineligible, incomplete, and/or non-responsive may be eliminated from further review. However, NIST, in its sole discretion, may continue the review process for an application that is missing non-substantive information that can easily be rectified or cured.

(2) *Full Review of Eligible, Complete, and Responsive Applications.* Applications that are determined to be eligible, complete, and responsive will proceed for full reviews in accordance with the review and selection processes below. Eligible, complete and responsive applications will be grouped by the State in which the proposed MEP Center is to be established. The applications in each group will be reviewed by the same reviewers and will be evaluated, reviewed and selected as described below in separate groups.

(a) *Evaluation and Review.* Each application will be reviewed by at least three technically qualified reviewers who will evaluate each application based on the evaluation criteria set forth above and in Section V.1. of the corresponding FFO. Applicants may receive written follow-up questions in order for the reviewers to gain a better understanding of the applicant's proposal. Each reviewer will assign each application a numeric score, with a maximum score of 100. If a non-Federal employee reviewer is used, the reviewers may discuss the applications with each other, but scores will be determined on an individual basis, not as a consensus.

Applicants whose applications receive an average score of 70 or higher out of 100 will be deemed finalists. If deemed necessary, all finalists will be invited to participate with reviewers in a conference call and/or all finalists will be invited to participate in a site visit that will be conducted by the same reviewers at the applicant's location. Finalists will be reviewed and evaluated, and reviewers may revise their assigned numeric scores based on the evaluation criteria set forth above and in Section V.1. of the corresponding FFO as a result of the conference call and/or site visit.

(b) *Ranking and Selection.* The reviewers' final numeric scores for all finalists will be converted to ordinal rankings (i.e., a reviewer's highest score will be ranked ''1'', second highest score will be ranked ''2'', etc.). The ordinal rankings for an applicant will be summed and rank order will be established based on the lowest total for the ordinal rankings, and provided to the Selecting Official for further consideration.

The Selecting Official is the NIST Associate Director of Innovation and Industry Services or his designee. The Selecting Official makes the final recommendation to the NIST Grants Officer regarding the funding of applications under this notice and the corresponding FFO. NIST/MEP expects to recommend funding for the highest ranked applicant for each of the ten (10) States being competed under this notice and the corresponding FFO. However, the Selecting Official may decide to select an applicant out of rank order based upon one or more of the Selection Factors identified above and in Section V.3. of the corresponding FFO. The Selecting Official may also decide not to recommend funding for a particular State to any of the applicants.

NIST reserves the right to negotiate the budget costs with any applicant selected to receive an award, which may include requesting that the applicant remove certain costs. Additionally, NIST may request that the successful applicant modify objectives or work plans and provide supplemental information required by the agency prior to award. NIST also reserves the right to reject an application where information is uncovered that raises a reasonable doubt as to the responsibility of the applicant. The final approval of selected applications and issuance of awards will be by the NIST Grants Officer. The award decisions of the NIST Grants Officer are final.

Anticipated Announcement and Award Date. Review, selection, and award processing is expected to be completed in January 2015. The anticipated start date for awards made under this notice and the corresponding FFO is expected to be July 2015.

Additional Information

a. *Application Replacement Pages.* Applicants may not submit replacement pages and/or missing documents once an application has been submitted. Any revisions must be made by submission of a new application that must be received by NIST by the submission deadline.

b. *Notification to Unsuccessful Applicants.* Unsuccessful applicants will be notified in writing.

c. *Retention of Unsuccessful Applications.* An electronic copy of each non-selected application will be retained for three (3) years for record keeping purposes. After three (3) years, it will be destroyed.

Administrative and National Policy Requirements

The Department of Commerce Pre-Award Notification Requirements: The DoC Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** notice of December 17, 2012 (77 FR 74634), are applicable to this notice and the corresponding FFO and are available at *https://www.federalregister.gov/articles/2012/12/17/2012-30228/department-of-commerce-pre-award-notification-requirements-for-grants-and-cooperative-agreements.*

Employer/Taxpayer Identification Number (EIN/TIN), Dun and Bradstreet Data Universal Numbering System (DUNS), and System for Award Management (SAM): All applicants for Federal financial assistance are required to obtain a universal identifier in the form of DUNS number and maintain a current registration in the Federal government's primary registrant database, SAM. On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit EIN/TIN and 9-digit DUNS number must be consistent with the information in SAM (*https://www.sam.gov/*) and the Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EINs/TINs and DUNS numbers, the EIN/TIN and DUNS numbers MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their application is selected for funding. Confirm that the EIN/TIN and DUNS number are consistent with the information on the SAM and ASAP. Please note that a federal assistance award cannot be issued if the designated recipient's registration in the System for Award Management (SAM.gov) is not current at the time of the award.

Per 2 CFR part 25, each applicant must:

1. Be registered in the Central Contractor Registration (CCR) before submitting an application, noting the CCR now resides in SAM;

2. Maintain an active CCR registration, noting the CCR now resides in SAM, with current information at all times during which it has an active Federal award or an application under consideration by an agency; and

3. Provide its DUNS number in each application it submits to the agency.

The applicant can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day. The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the EIN/TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration annually. This may take three or more business days to complete. Information about SAM is available at *www.sam.gov. See* also 2 CFR part 25 and the **Federal Register** notice published on September 14, 2010, at 75 FR 55671.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. MEP program-specific application requirements have been approved by OMB under Control Number 0693–0056.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

DoC Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction Under Any Federal Law. In accordance with the Federal appropriations law expected to be in effect at the time of project funding, NIST anticipates that the selected applicants will be provided a form and asked to make a representation regarding any unpaid delinquent tax liability or felony conviction under any Federal law.

Funding Availability and Limitation of Liability: Funding for the program listed in this notice and the corresponding FFO is contingent upon the availability of appropriations. In no event will NIST or DoC be responsible for application preparation costs if this program fails to receive funding or is cancelled because of agency priorities. Publication of this notice and the corresponding FFO does not oblige NIST or DoC to award any specific project or to obligate any available funds.

Other Administrative and National Policy Requirements: Additional administrative and national policy requirements are set forth in Section VI.2. of the corresponding FFO.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with

federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Proposals under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for matters relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Moreover, because notice and comment are not required under 5 U.S.C. 553, or any other law, for matters relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 et seq.

Dated: July 28, 2014.

Jason Boehm,

Director, Program Coordination Office.

[FR Doc. 2014–18264 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel) will meet in closed session on Wednesday, August 27, 2014, from 9:00 a.m. until 3:30 p.m. Eastern Time. The purpose of this meeting is to review the results of examiners' scoring of written applications. Panel members will vote on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting.

DATES: The meeting will be held on Wednesday, August 27, 2014, from 9:00 a.m. until 3:30 p.m. Eastern Time. The entire meeting will be closed to the public.

ADDRESSES: The meeting will be held at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–4781, email *robert.fangmeyer@nist.gov*.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet on Wednesday, August 27, 2014, from 9:00 a.m. until 3:30 p.m. Eastern Time. The Judges Panel is composed of twelve members, appointed by the Secretary of Commerce, chosen for their familiarity with quality improvement operations and competitiveness issues of manufacturing companies, services companies, small businesses, health care providers, and educational institutions. Members are also chosen who have broad experience in for-profit and nonprofit areas. The purpose of this meeting is to review the results of examiners' scoring of written applications. Panel members will vote on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The meeting is closed to the public in order to protect the proprietary data to be examined and discussed at the meeting. The Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the Assistant General Counsel for Administration, formally determined on March 25, 2014, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, that the meeting of the Judges Panel may be closed to the public in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential and 5 U.S.C. 552b(c)(9)(b [*sic*]) because for a government agency the meeting is likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of current Award applicant data from U.S. organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

Dated: July 28, 2014.

Jason Boehm,

Director, Program Coordination Office.

[FR Doc. 2014–18255 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will meet Monday, August 18, 2014 from 8:30 a.m. to 5:00 p.m. Mountain Time and Tuesday, August 19, 2014, from 8:30 a.m. to 2:30 p.m. Mountain Time. The primary purpose of this meeting is to discuss priorities of the National Earthquake Hazards Reduction Program (NEHRP) for optimal NEHRP agency interactions with researchers and practitioners in other natural and man-made hazards disciplines and in the broader resilience environment, to review the NEHRP agency updates on their latest activities, and to gather information for the Committee's 2015 Report on the Effectiveness of the NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at *http://nehrp.gov/*.

DATES: The ACEHR will meet on Monday, August 18, 2014, from 8:30 a.m. until 5:00 p.m. Mountain Time. The meeting will continue on Tuesday, August 19, 2014, from 8:30 a.m. until 2:30 p.m. Mountain Time. The meeting will be open to the public.

ADDRESSES: The meeting will be held in the entry-level conference room 204 at the U.S. Geological Survey (USGS), 1711 Illinois Street, Golden, Colorado 80401. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Dr. Hayes' email address is *jack.hayes@nist.gov* and his phone number is (301) 975–5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of

Section 103 of the National Earthquake Hazards Reduction Program (NEHRP) Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of members appointed by the Director of NIST, who were selected for their established records of distinguished service in their professional community, their knowledge of issues affecting the National Earthquake Hazards Reduction Program, and to reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves as an ex-officio member of the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- the effectiveness of NEHRP in performing its statutory activities;
- any need to revise NEHRP; and
- the management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/*.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ACEHR will hold an open meeting on Monday, August 18, 2014 from 8:30 a.m. to 5:00 p.m. Mountain Time and Tuesday, August 19, 2014, from 8:30 a.m. to 2:30 p.m. Mountain Time. The meeting will be held in the entry-level conference room 204 at the U.S. Geological Survey (USGS), 1711 Illinois Street, in Golden, Colorado 80401. The primary purpose of this meeting is to discuss priorities of the National Earthquake Hazards Reduction Program (NEHRP) for optimal NEHRP agency interactions with researchers and practitioners in other natural and man-made hazards disciplines and in the broader resilience environment, to review the NEHRP agency updates on their latest activities, and to gather information for the Committee's 2015 Report on the Effectiveness of the NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP Web site at *http://nehrp.gov/*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On August 19, 2014, approximately one-half hour will be reserved near the conclusion of the meeting for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about three minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, via fax at (301) 975–4032, or electronically by email to *info@nehrp.gov*.

All visitors to the USGS site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by 5:00 p.m. Eastern Time, Thursday, August 14, 2014, in order to attend. Please submit your full name, email address, and phone number to Felicia Johnson. Ms. Johnson's email address is *felicia.johnson@nist.gov* and her phone number is (301) 975–5324.

Dated: July 25, 2014.

Willie E. May,

Associate Director of Laboratory Programs.

[FR Doc. 2014–18085 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD417

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Electronic Monitoring (EM) workgroup will meet by teleconference.

DATES: The teleconference will be held on August 13, 2014, from 8:30 a.m. to 12:30 p.m., please call (907) 271–2896.

ADDRESSES: The teleconference will be held at the North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The workgroup will discuss progress with study designs, establishing data protocols, EM research and field studies, and planning for the analysis to implement EM.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: July 29, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–18133 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD404

Pacific Island Fisheries; Marine Conservation Plan for Pacific Insular Areas; Western Pacific Sustainable Fisheries Fund

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a Marine Conservation Plan (MCP) for Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands.

DATES: This agency decision is effective from August 4, 2014, through August 3, 2017.

ADDRESSES: You may obtain a copy of the MCP, identified by NOAA–NMFS–2014–0092, from the Federal e-Rulemaking Portal, *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0092,* or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–725–5176.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce

(Secretary) and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to any Pacific Insular Area other than American Samoa, Guam or the Northern Mariana Islands, that is, in the EEZ around the Pacific remote island areas (PRIA). The PRIA are Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, and Palmyra Atoll. Before entering into a PIAFA for the PRIA, the Council must develop a 3-year MCP providing details on uses for any funds collected by the Secretary under the PIAFA.

The Magnuson-Stevens Act requires any payments received under a PIAFA, and any funds or contributions received in support of conservation and management objectives for the PRIA, to be deposited into the Western Pacific Sustainable Fisheries Fund (Fund) for use by the Council. Additionally, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act for violations by foreign vessels occurring within the EEZ off any PRIA are also deposited into the Fund for use by the Council.

An MCP must be consistent with the Council's fishery ecosystem plans, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects. Although no foreign fishing is being considered at this time, at its 160th meeting held June 24–27, 2014, the Council approved an MCP for Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands. On July 7, 2014, the Council submitted the MCP to NMFS for review and approval.

The MCP contains five conservation and management objectives, listed below. Please refer to the MCP for planned projects and activities designed to meet each objective, the evaluative criteria, and priority rankings.

MCP Objectives

1. Support quality research and monitoring to obtain the most complete scientific information available to assess and manage fisheries within an ecosystem approach.

2. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision-making process.

3. Promote regional cooperation to manage domestic and international fisheries.

4. Encourage development of technologies and methods to achieve the most effective level of monitoring, control and surveillance, and to ensure safety at sea.

5. Support Western Pacific community demonstration projects and Western Pacific Community Development Program to promote participation and access to fisheries for eligible communities.

The MCP also identifies additional objectives and activities consistent with the Hawaii Archipelago FEP and Pelagics FEP. Section 204(e)(7)(C) of the Magnuson-Stevens Act authorizes the Council to use the Fund to meet conservation and management objectives in the State of Hawaii.

This notice announces that NMFS has determined that the MCP satisfies the requirements of the Magnuson-Stevens Act and approves the MCP for the 3-year period from August 4, 2014, through August 3, 2017. This MCP supersedes the one approved for the period August 4, 2011 through August 3, 2014 (76 FR 50183, August 12, 2011).

Dated: July 28, 2014.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–18220 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA840

Marine Mammals; File Nos. 14097 and 16479

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 14097–03 has been issued to the National Marine Fisheries Service, Southwest Fisheries Science Center (SWFSC) (Responsible Party: Lisa Ballance, Ph.D.), Protected Resources Division, 8901 La Jolla Shores Drive, La Jolla, CA 92037 and a major amendment to Permit No. 16479–01 has been issued to The Pacific Whale Foundation (PWF) (Responsible Party: Gregory Kaufman), 300 Maalaea Road, Suite 211, Wailuku, HI 96793.

ADDRESSES: The permit amendments and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On April 2, 2014 and January 10, 2014, notice was published in the **Federal Register** (79 FR 18527 and 79 FR 1833) that a request for an amendment to Permit No. 14097–03 and an amendment to Permit No. 16479–01, respectively, to conduct research on 57 cetacean species, including endangered Hawaiian insular false killer whales (*Pseudorca crassidens*), had been submitted by the above-named applicants. The requested permit amendments have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 14097–04 authorizes the SWFSC to conduct scientific research on 5 pinniped species, 57 cetacean species, and 5 sea turtle species in U.S. territorial and international waters of the Pacific, Southern, Indian, and Arctic Oceans for three projects. Cetacean surveys are conducted to determine the abundance, distribution, movement patterns, and stock structure of cetaceans. These studies are conducted through vessel surveys, aerial surveys, small plane photogrammetry, photo-identification (from vessels and small boats), biological sampling, radio tagging, and satellite tagging. The amendment to the permit authorizes: (1) The use of an unmanned aerial system (UAS) to photograph cetaceans during aerial surveys; (2) collect breath samples from gray whales (*Eschrichtius robustus*) using the UAS; (3) suction cup tag gray whales; and (4) attach dart/barb tags to 15 bottlenose (*Tursiops truncatus*) and 15 Risso's dolphins (*Grampus griseus*) per year. The permit amendment is valid through June 30, 2015.

Permit No. 16479–02 authorizes vessel-based research on humpback whales (*Megaptera novaeangliae*) in waters around Maui, Hawaii to quantify the potential for near misses between vessels and humpback whales, and

define the probability of 'surprise encounters' with humpback whales. The permit amendment authorizes PWF to approach false killer whales for photo-identification and behavioral observation to study their occurrence, distribution, movement, site fidelity, abundance, social organization, home ranges, and life history in place of previously authorized takes for incidental harassment during vessel surveys. The number of annual takes authorized for the stock would not change. The permit expires on June 1, 2017.

An environmental assessment (EA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) for each permit. Based on the analyses in the EAs, NMFS determined that issuance of the amended permits would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI) for each action, signed on July 7, 2014 (File No. 14097) and September 17, 2012 (File No. 16479).

As required by the ESA, issuance of each permit amendment was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 22, 2014.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–18106 Filed 7–31–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

Comments Must be Received on Or Before: 9/1/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN: 3990–00–NSH–0081—Sideboard Pallet, 48″ × 48″.
NPA: Knox County Association for Retarded Citizens, Inc., Vincennes, IN.
Contracting Activity: Dept of the Army, W39Z STK REC ACCT–CRANE AAP, Crane, IN.
Coverage: C-List for 100% of the requirement of the Crane Army Ammunition Activity, as aggregated by the Army Contracting Command—W39Z STK REC ACCT–CRANE AAP, Crane, IN.

Service

Service Type/Location: Snow Removal Service, GSA, PBS, Region 5, Gerald R. Ford Federal Building, 110 Michigan Street NW., Grand Rapids, MI.
NPA: Hope Network Services Corporation, Grand Rapids, MI.
Contracting Activity: GSA, Public Buildings Service, Acquisition Management Division, Dearborn, MI.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN: 5340–00–881–5019—AQL Inspection, Clamp, Loop.
NPA: Provail, Seattle, WA.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Gloves, Surgical, Powder-Free

NSN: 6515–00–NIB–0735—Biogel, Orthopro Indicator, Underglove, Green, Size 6″.
NSN: 6515–00–NIB–0736—Biogel, Orthopro Indicator, Underglove, Green, Size 6.5″.
NSN: 6515–00–NIB–0737—Biogel, Orthopro Indicator, Underglove, Green, Size 7″.
NSN: 6515–00–NIB–0738—Biogel, Orthopro Indicator, Underglove, Green, Size 7.5″.
NSN: 6515–00–NIB–0739—Biogel, Orthopro Indicator, Underglove, Green, Size 8″.
NSN: 6515–00–NIB–0740—Biogel, Orthopro Indicator, Underglove, Green, Size 8.5″.
NSN: 6515–00–NIB–0741—Biogel, Orthopro Indicator, Underglove, Green, Size 9″.
NSN: 6515–00–NIB–0742—Biogel, Orthopro, Overglove, Straw colored, Size 6″.
NSN: 6515–00–NIB–0743—Biogel, Orthopro, Overglove, Straw colored, Size 6.5″.
NSN: 6515–00–NIB–0744—Biogel, Orthopro, Overglove, Straw colored, Size 7″.
NSN: 6515–00–NIB–0745—Biogel, Orthopro, Overglove, Straw colored, Size 7.5″.
NSN: 6515–00–NIB–0746—Biogel, Orthopro, Overglove, Straw colored, Size 8″.
NSN: 6515–00–NIB–0747—Biogel, Orthopro, Overglove, Straw colored, Size 8.5″.
NSN: 6515–00–NIB–0748—Biogel, Orthopro, Overglove, Straw colored, Size 9″.
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.
Contracting Activity: Department Of Veterans Affairs, NAC, Hines, IL.

Chipboard

NSN: 8135–00–782–3948.
NSN: 8135–00–782–3951.
NSN: 8135–00–290–0336.
NSN: 8135–00–579–8457.
NPA: Louisiana Association for the Blind, Shreveport, LA.
Contracting Activity: General Services Administration, New York, NY.

Services

Service Type/Location: Grounds Maintenance Service, US Army

Corps of Engineers, Jadwin Building, Fort Point Reservation, 2000 Fort Point Road, Galveston, TX.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.
Contracting Activity: Dept of the Army, W076 ENDIST FT Worth, Fort Worth, TX.
Service Types/Locations:
Facilities/Grounds Maintenance, Addicks Field Office and Compound Storage Yard, Barker Visitors Areas, Dams, Reservoirs & Related, 2000 Fort Point Road, Houston, TX.
Facility and Grounds Maintenance Service, US Army Corps of Engineers, Wallisville Lake, 20020 IH–10 East Feeder Road, Wallisville, TX.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.
Contracting Activity: Dept of the Army, W076 ENDIST Galveston, Galveston, TX.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–18138 Filed 7–31–14; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 9/1/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/6/2014 (79 FR 32716–32718) and 6/20/2014 (79 FR 35320), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:
Products:
NSN: 7490–00–NIB–0044—Paper Shredder, High Security, Level 6, Cabinet Style
NSN: 7490–00–NIB–0045—Paper Shredder, Desk-Side, Personal, Level 3, Cross-Cut
NPA: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration, New York, NY.

Services

Service Type/Location: Custodial Service, Federal Aviation Administration, Atlanta Large TRACON, 784 Highway 74 South, Peachtree City, GA
NPA: New Ventures Enterprises, Inc., LaGrange, GA
Contracting Activity: Dept. of Transportation, Federal Aviation Administration, College Park, GA
Service Type/Location: Administrative Contract Close-Out Support Service, Consumer Financial Protection Bureau, 1625 Eye Street NW., Washington, DC
NPA: ServiceSource, Inc., Alexandria, VA
Contracting Activity: Department of Treasury, Bureau of the Fiscal Service, PSB 3, Parkersburg, WV

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–18137 Filed 7–31–14; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent; Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Riverport Development and Proposed New Interchange on I–95 in Jasper County, South Carolina

AGENCY: U.S. Army Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Charleston District (as the lead agency) and the Federal Highway Administration and Fish and Wildlife Service (as cooperating agencies) intend to prepare a Draft Environmental Impact Statement (DEIS) to assess the likely social, economic and environmental effects of the proposed construction of a mixed use industrial, commercial and residential development with the potential to impact Waters of the United States near Hardeeville in Jasper County, South Carolina. Associated with this development will be the possible construction of a new interchange on I–95, in the vicinity of the mile marker 3 in South Carolina. The DEIS will assess potential effects of a range of alternatives.

DATES: *Public Scoping Meeting:* One public scoping meeting is planned for Tuesday, August 19th at the Hardeeville City Hall, 205 East Main Street, Hardeeville, SC 29927. An informal open-house information session will be held between 6:00 p.m. and 7:00 p.m. in the City Council Chambers, followed by a formal scoping meeting beginning at 7:00 p.m. and continuing until all comments have been heard in the Community Room. The formal meeting will include an overview of the project as well as an opportunity for members of the public to provide comments. Individuals and organizations that are interested in the proposed activity or whose interests may be affected by the proposed work are encouraged to attend the Scoping Meeting and to submit written comments to the Corps.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed project and DEIS, please contact Mr. Shawn Boone, Project Manager, by *telephone:* 843–

329–8158, or *toll-free* 1–866–329–8187, or by *mail:* Mr. Shawn Boone, Project Manager, Regulatory Division, 69–A Hagood Avenue, Charleston, SC 29403. For inquiries from the media, please contact the Corps, Charleston District Corporate Communications Officer (CCO), Ms. Glenn Jeffries by *telephone:* (843) 329–8123.

SUPPLEMENTARY INFORMATION: The Corps is evaluating a proposal from Stratford Land, the City of Hardeeville and Jasper County for a new development, Riverport, and a new interchange on I–95 (Exit 3) in accordance with Corps regulations and the policies and procedures that are established in the National Environmental Policy Act (NEPA). Based on the available information, the Corps has determined that the Riverport development and the proposed new interchange on I–95 have the potential to significantly affect the quality of the human environment and therefore warrant the preparation of an EIS. Additional information about the proposed project and the NEPA process is available on the project Web site at: *www.RiverPort-Exit3EIS.com.*

1. *Description of Proposed Project.* The project proposed by Stratford Land is to develop the approximately 5,000 acre tract in Hardeeville, SC as the Riverport mixed-use residential, commercial and business park/light industrial site. Riverport will consist of a 1,755-acre business park, 840-acre commercial village, and 2,390-acre mixed use (residential and commercial) village. The Business Park is to be one of the largest logistics and industrial sites in the Southeast. It is intended to handle some of the container traffic into the Savannah port resulting from the introduction of the post-Panamax Canal ships. As a result of vehicular traffic projected from this industrial park, the City of Hardeeville and Jasper County propose a new interchange at I–95 that connects with the proposed Riverport Parkway to accommodate the increased traffic projected to occur. The Business Park and commercial development will provide a significant economic impact to the area by providing thousands of construction jobs during the building phases and over 24,000 permanent jobs by year 30 of the development.

2. *Alternatives.* A range of alternatives to the proposed action will be identified, and those found to be reasonable alternatives will be fully evaluated in the DEIS, including: the no-action alternative, the applicant's proposed alternative, alternative site locations, alternatives that may result in avoidance and minimization of impacts, and mitigation measures not in the proposed action. However, this list is not exclusive and additional alternatives may be considered for inclusion.

3. *Scoping and Public Involvement Process.* A scoping meeting will be conducted to gather information on the scope of the project and alternatives to be addressed in the DEIS. Additional public and agency involvement will be sought through the implementation of a public involvement plan and through an agency coordination team.

4. *Significant Issues.* Issues associated with the proposed project to be given detailed analysis in the DEIS are likely to include, but are not necessarily limited to, the potential impacts of the proposed development on surface and groundwater quality, aquatic habitat and biota, wetlands and stream habitats, federal and state listed species of concern, indirect and cumulative impacts, the Savannah River Wildlife Refuge, threatened and endangered species, environmental justice, mitigation, emergency response and contingency plans, noise, conservation, economics, cultural resources, aesthetics, general environmental concerns, historic properties, fish and wildlife values, flood hazards, land use, recreation, water supply and conservation, water quality, energy needs, safety, the transportation network, and in general, the needs and welfare of the people.

5. *Additional Review and Consultation.* Additional review and consultation which will be incorporated into the preparation of this DEIS will include, but will not necessarily be limited to, Section 401 of Clean Water Act; Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act; the National Environmental Policy Act; the Endangered Species Act; and the National Historic Preservation Act.

6. *Availability of the Draft Environmental Impact Statement.* The Draft Environmental Impact Statement (DEIS) is anticipated to be available late in 2015. A Public Hearing will be conducted following the release of the DEIS.

John T. Litz,

U.S. Army Corps of Engineers, Charleston District.

[FR Doc. 2014–18270 Filed 7–31–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Final Environmental Impact Statement for the Installation of a Terminal Groin Structure at the Western End of South Beach, Bald Head Island, Adjacent to the Federal Wilmington Harbor Channel of the Cape Fear River (Brunswick County, NC)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from the Village of Bald Head Island (VBHI) to develop and implement a shoreline protection plan that includes the installation of a terminal groin structure on the east side of the Wilmington Harbor Baldhead Shoal Entrance Channel (a federally-maintained navigation channel of the Cape Fear River) at the ''Point'' of Bald Head Island. The structure will be designed to function in concert with Federal beach disposal operations associated with the Wilmington Harbor navigation project.

DATES: The Public commenting period on the FEIS will end on September 1, 2014. Written comments must be received no later than 5 p.m. at (see **ADDRESSES**).

ADDRESSES: Copies of comments and questions regarding the FEIS may be submitted to: U.S. Army Corps of Engineers (Corps), Wilmington District, Regulatory Division. ATTN: File Number SAW–2012–00040, 69 Darlington Avenue, Wilmington, NC 28403.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and FEIS can be directed to Mr. Ronnie Smith, Wilmington Regulatory Field Office, telephone: (910) 251–4829, facsimile (910) 251–4025, or email at *ronnie.d.smith@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Project Description. The west end of South Beach, Bald Head Island, Brunswick County, North Carolina, has experienced both chronic and short-term shoreline erosion. This erosion has resulted in direct impacts to nearby beaches and dunes and could potentially impact public infrastructure

and homes. This area has been subject to past sand placement activities sponsored by both the VBHI and the Corps. The Corps has placed several million cubic yards of suitable material on this shoreline since 1991 as part of a Federal navigation project. To address its erosion issue, the VBHI desires to implement a long-term beach and dune stabilization strategy to include installation of a single terminal groin at the western end of South Beach. The proposed terminal groin would be expected to perform the following functions: (1) Reduce inlet-directed sand losses from beach fill projects; and (2) stabilize shoreline alignment along the westernmost segment of South Beach in such a manner that alongshore transport rates are reduced. The terminal groin would serve as a ''template'' for fill material placed eastward (of the proposed terminal groin). The proposed groin has been designed as a ''leaky'' structure (*i.e.,* semi-permeable) so as to provide for some level of sand transport to West Beach (located northward and downdrift of the proposed groin).

2. Issues. There are several potential environmental and public interest issues that are addressed in the FEIS. Additional issues may be identified during the public review process. Issues initially identified as potentially significant include:

a. Potential impacts to marine biological resources (benthic organisms, passageway for fish and other marine life) and Essential Fish Habitat.

b. Potential impacts to threatened and endangered marine mammals, reptiles, birds, fish, and plants.

c. Potential for shoreline changes on West Beach of Bald Head Island and adjacent areas.

d. Potential impacts to Navigation, commercial and recreational.

e. Potential impacts to the long-term management of the oceanfront shorelines.

f. Potential effects on regional sand sources and sand management practices.

g. Potential effects of shoreline protection.

h. Potential impacts on public health and safety.

i. Potential impacts to recreational and commercial fishing.

j. Potential impacts to cultural resources.

k. Cumulative impacts of future dredging and nourishment activities.

3. Alternatives. Several alternatives are being considered for the proposed project. These alternatives, including the No Action alternative, were further formulated and developed during the scoping process and are considered in the FEIS. A summary of alternatives under consideration are provided below:

- Alternative #1: No-Action (includes component of Status-Quo)
- Alternative #2: Retreat
- Alternative #3: Beach Nourishment/ Disposal with Existing Sand Tube Groinfield to Remain in Place
- Alternative #4: Beach Nourishment/ Beach Disposal and Sand Tube Groinfield Removal
- Alternative #5: Terminal Groin with Beach Nourishment/Beach Disposal (Sand Tube Groinfield Remaining)
- Alternative #6: Terminal Groin with Beach Nourishment/Disposal (Removal of Sand Tube Groinfield)

4. Scoping Process. Project Review Team meetings were held to receive comments and assess concerns regarding the appropriate scope and preparation of the DEIS. Federal, state, and local agencies and other interested organizations and persons participated in these Project Review Team meetings.

The Corps has completed consultation with the United States Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act and with the National Marine Fisheries Service under the Magnuson-Stevens Act and Endangered Species Act. Also, the Corps has initiated consultation with the National Marine Fisheries Service under the Endangered Species Act and the Fish and Wildlife Coordination Act. Additionally, the EIS assesses the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and is coordinated with the North Carolina Division of Coastal Management (DCM) to insure the projects consistency with the Coastal Zone Management Act. The COE has coordinated closely with DCM in the development of the EIS to ensure the process complies with State Environmental Policy Act (SEPA) requirements, as well as the NEPA requirements. The Final EIS has been designed to consolidate both NEPA and SEPA processes to eliminate duplications.

6. Availability of the FEIS. The FEIS has been published and circulated. The FEIS for the proposal can be found at the following link, *http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/PublicNotices.aspx,* under the VBHI Terminal Groin Project.

Dated: July 23, 2014.

Scott McLendon,

Chief, Regulatory Division.

[FR Doc. 2014–18256 Filed 7–31–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Alaska Gasline Development Corporation (AGDC)'s Proposed Alaska Stand Alone Pipeline (ASAP) Utility-Grade Natural Gas Transportation Pipeline

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Alaska District, U.S. Army Corps of Engineers (Corps) intends to prepare a DSEIS to identify and analyze the potential impacts associated with the construction of the proposed ASAP utility grade natural gas transportation pipeline. The Corps is the lead federal agency and currently the National Park Service (NPS), U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Land Management (BLM), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Environmental Protection Agency (EPA), and the State of Alaska Department of Natural Resources State Pipeline Coordinator's Office (SPCO) are participating as cooperating agencies in the DSEIS development process. The Supplemental Environmental Impact Statement (SEIS) will be used as a basis for the Corps permit decision and to ensure compliance with the National Environmental Policy Act (NEPA). The Corps will be evaluating a permit application for work under Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972. Because ASAP would require decisions and actions by other federal agencies (such as right-of-way grants and other permits), this DSEIS will also fulfill the NEPA requirements for those cooperating federal agencies.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DSEIS can be answered by: Ms. Mary Romero, Regulatory Division, telephone: (907) 753–2773, toll free in AK: (800) 478–2712, fax: (907) 753–5567, email: *asapeiscomments@usace.army.mil,* or mail: U.S. Army Corps of Engineers, CEPOA–RD, Post Office Box 6898, JBER, Alaska 99506–0898. Additional information may be obtained at *www.asapeis.com.*

SUPPLEMENTARY INFORMATION:

1. The permit applicant, the AGDC, has proposed, ''The purpose of the

Alaska In-State Gas Pipeline (now known as ASAP) is codified in state law as one of the projects the Alaska Gasline Development Corporation (AGDC) is directed to develop. As stated in state law, AGDC ''shall, for the benefit of the state, to the fullest extent possible, . . . develop, finance, construct, and operate an in-state natural gas pipeline in a safe, prudent, economical, and efficient manner, for the purpose of making natural gas, including propane and other hydrocarbons associated with natural gas other than oil, available to Fairbanks, the Southcentral region of the state, and other communities in the state at the lowest rates possible.'' (Alaska Statute 31.25.005(4)).

The ASAP Project would be comprised of a natural gas conditioning facility (GCF) near Prudhoe Bay capable of producing 500 MMscfd of utility-grade natural gas; a 36-inch, 727-mile long, 1,480 psig subsurface natural gas pipeline connecting the GCF to the existing ENSTAR pipeline system in the Matanuska-Susitna Borough; and a 12-inch, 29-mile long, 1,480 psig, subsurface lateral line connecting the mainline to Fairbanks. The GCF would be constructed from modules delivered to the existing West Dock causeway in Prudhoe Bay. Facilitating transport and offload of these modular components will require modifications to dock head 3, winter dredging of a navigational channel to a 10-ft depth, nearshore dispersion of dredge material over bottomfast ice, channel screeding, and use of a temporary ballasted barge bridge during offload. The proposed pipeline would be buried except at possible fault crossings, elevated bridge stream crossings, pigging facilities, and block valve locations. Because the pipeline system would be designed to transport utility-grade natural gas, access to smaller communities would be possible. The ASAP route would generally parallel the Trans-Alaska Pipeline System (TAPS) and Dalton Highway corridor to near Livengood, northwest of Fairbanks. At Livengood, the route would continue south, to the west of Fairbanks and Nenana. The pipeline would bypass Denali National Park and Preserve to the east and would then generally parallel the Parks Highway corridor to Willow, continuing south to its connection with ENSTAR's distribution system at MP 39 of the Beluga Pipeline southwest of Big Lake. The Fairbanks Lateral tie-in would be located approximately two miles south of the Chatanika River, crossing at MP 439 of the mainline. From the mainline tie-in, the Fairbanks Lateral pipeline would traverse east over Murphy Dome, following the Murphy Dome and Old Murphy Dome Roads, and then extend southeast into Fairbanks.

2. *Alternatives:* The Corps will evaluate alternatives including the no action alternative, the proposed action alternative, and other on-site and off-site alternatives. The proposed project and the alternatives to its proposed size, design, and location will be developed through the EIS process and considered along with those routes and variations discussed in the 2012 FEIS.

3. *Scoping Process:* The scoping period will begin on August 1, 2014, and end on October 14, 2014.

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All federal, state, Tribal, local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. Scoping meetings will be held to receive public input on the proposed purpose and need of the project, to identify significant issues and to discuss proposed alternatives. The scoping process will help to further explain the purpose and need plus the alternatives to be reviewed in the DSEIS.

b. Scoping Meetings

Public scoping meetings will be held 5:30–8:30 p.m. on the following dates and locations (exceptions indicated in parentheses). Please check the project Web site (*www.asapeis.com*) for potential updates to scoping meeting dates and locations:

1. Healy, Monday, August 18, 2014; Tri-Valley Community Center, Usibelli Spur Rd, Healy, AK 99743;

2. Nenana, Tuesday, August 19, 2014; Nenana Native Village Tribal House, PO Box 369, Nenana, AK 99760;

3. Cantwell, Wednesday, August 20, 2014; Cantwell Community Hall, Cantwell, AK 99729;

4. Talkeetna, Thursday, August 21, 2014; Talkeetna Alaska Lodge, 23601 Talkeetna Spur Rd, Talkeetna, AK 99676;

5. Willow, Monday, August 25, 2014; Willow Community Center, PO Box 1027, Willow, AK 99688;

6. Anchorage, Tuesday, August 26, 2014 (to be held 6:30–9:30 p.m.); UAA Consortium Library, Room 307, Anchorage, AK 99508;

7. Kenai, Wednesday, August 27, 2014; Quality Inn, 10352 Kenai Spur Highway, Kenai, AK 99611;

8. Seward, Thursday, August 28, 2014; KM Rae Building at UAA-Seward Campus, 125 Third Ave, Seward, AK 99664;

9. Fairbanks, Tuesday, September 2, 2014; Westmark Hotel, 813 Noble St, Fairbanks, AK 99701;

10. Wiseman, Wednesday, September 3, 2014; Community Center of Wiseman, Wiseman, AK 99701;

11. Minto, September 4, 2014; (Tentatively scheduled at Minto Lake View Lodge), Lake View Rd, Minto, AK 99758;

12. Anuktuvuk Pass, Wednesday, September 10, 2014 (to be held 1:00–4:00 p.m.); Anuktuvuk Pass Community Center, Anaktuvuk Pass, AK 99721;

13. Barrow, Wednesday, September 17, 2014; Inupiat Heritage Center, PO Box 69, Barrow, AK 99723; and

14. Nuiqsut, Thursday, September 18, 2014; Kisik Community Center, PO Box 89148 Nuiqsut, AK 99789.

Comments can be made through oral testimony or as written comments during scoping meetings. Comments can also be submitted to the Corps by October 14, 2014 via mail or email (*asapeiscomments@usace.army.mil*) (see **FOR FURTHER INFORMATION CONTACT**). We request that you include in your comments: (1) Your name, address, and affiliation (if any); and (2) Any background documents to support your comments as you think necessary.

4. The lands along the proposed pipeline corridor and one or more of its alternatives are owned by numerous entities; including, federal and state governments, the State of Alaska, and private land holders. Federal land managers include the BLM, NPS and the Department of Defense. Private landholders include Native corporations, Native allottees, and land owned by other private individuals.

5. The DSEIS will analyze the potential social, economic, and environmental impacts to the affected areas with particular focus on elements of the pipeline route that are new and different from the route analyzed in the 2012 FEIS. The following major issues will be analyzed in depth in the DSEIS: Construction of the liquid natural gas delivery system, operation, and maintenance and its affect upon the surrounding communities and environment including: essential fish habitat; threatened and endangered species including critical habitat; cultural resources; socioeconomics; and secondary and cumulative impacts.

6. It is anticipated that the DSEIS will be available in spring 2015 for public review. A second public comment period will occur once the FSEIS is released. For updates to the project schedule and for additional details, please go to the project Web site (*www.asapeis.com*).

Dated: July 25, 2014.

Michael Salyer,

North Branch Chief, Alaska District, U.S. Army Corps of Engineers.

[FR Doc. 2014–18266 Filed 7–31–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1119–000.

Applicants: Dauphin Island Gathering Partners.

Description: Negotiated Rates 7–22–14 to be effective 8/1/2014.

Filed Date: 7/23/14.

Accession Number: 20140723–5061.

Comments Due: 5 p.m. ET 8/4/14.

Docket Numbers: RP14–1120–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: S–2 Tracker Filing Effective 2014–08–01 to be effective 8/1/2014.

Filed Date: 7/23/14.

Accession Number: 20140723–5101.

Comments Due: 5 p.m. ET 8/4/14.

Docket Numbers: RP14–1121–000.

Applicants: Tallgrass Interstate Gas Transmission, L.

Description: Neg Rate 2014–07–23 DCP Midstream to be effective 7/24/2014.

Filed Date: 7/23/14.

Accession Number: 20140723–5134.

Comments Due: 5 p.m. ET 8/4/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP14–247–002.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin 2014 Rate Settlement.

Filed Date: 7/23/14.

Accession Number: 20140723–5114.

Comments Due: 5 p.m. ET 8/4/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated July 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–18140 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–771–007.

Applicants: Louisville Gas & Electric Company, Kentucky Utilities Company.

Description: Annual Schedule 2 True-Up Filing of Louisville Gas and Electric Company/Kentucky Utilities Company.

Filed Date: 9/12/2013.

Accession Number: 20130912–5073.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER07–771–008.

Applicants: Louisville Gas & Electric Company, Kentucky Utilities Company.

Description: Annual Schedule 2 True-Up Filing of Louisville Gas and Electric Company/Kentucky Utilities Company.

Filed Date: 7/18/14.

Accession Number: 20140718–5139.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER10–2924–005.

Applicants: Kleen Energy Systems, LLC.

Description: Compliance Filing for Electric Tariff to be effective 7/25/2014.

Filed Date: 7/24/14.

Accession Number: 20140724–5092.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–1913–001.

Applicants: Oneta Power, LLC.

Description: Amendment to Tariff Filing to be effective 5/9/2014.

Filed Date: 7/24/14.

Accession Number: 20140724–5104.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2232–001.

Applicants: Capital Energy LLC.

Description: Updated Asset Appendix to be effective N/A.

Filed Date: 7/24/14.

Accession Number: 20140724–5118.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2498–000.

Applicants: EIF Newark, LLC.

Description: Market-Based Rate Application to be effective 9/22/2014.

Filed Date: 7/24/14.

Accession Number: 20140724–5107.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2499–000.

Applicants: Oneta Power, LLC.

Description: Notice of Succession of Market_Based Rate Tariff to be effective 7/3/2014.

Filed Date: 7/24/14.

Accession Number: 20140724–5109.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2500–000.

Applicants: Newark Energy Center, LLC.

Description: Market-Based Rate Application to be effective 9/22/2014.

Filed Date: 7/24/14.

Accession Number: 20140724–5112.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2501–000.

Applicants: EAM Nelson Holding, LLC.

Description: EAM Nelson Holding, LLC, Reactive Power Rate Schedule to be effective 9/1/2014.

Filed Date: 7/24/14.

Accession Number: 20140724–5116.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2502–000.

Applicants: Entergy Power, LLC.

Description: Entergy Power, LLC, Reactive Power Rate Schedule to be effective 9/1/2014.

Filed Date: 7/24/14.

Accession Number: 20140724–5117.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2503–000.

Applicants: Fitchburg Gas and Electric Light Company.

Description: Normal FGE and KCS Service to be effective 7/1/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5000.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER14–2504–000.

Applicants: Southern California Edison Company.

Description: CLGIA with Windhub Solar, LLC. to be effective 7/26/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5001.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER14–2505–000.

Applicants: Kentucky Utilities Company.

Description: CWIP Modifications to be effective 6/20/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5030.
Comments Due: 5 p.m. ET 8/15/14.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA14–2–000.
Applicants: East Coast Power Linden Holdings, L.L.C., Cogen Technologies Linden Venture, L.P., Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC, Homer City Generation, L.P.
Description: Quarterly Land Acquisition Report of the GE Companies.
Filed Date: 7/24/14.
Accession Number: 20140724–5121.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: LA14–2–000.
Applicants: Beech Ridge Energy LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC, California Ridge Wind Energy LLC, Forward Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Grays Harbor Energy LLC, Hardee Power Partners Limited, Invenergy Cannon Falls LLC, Invenergy TN LLC, Judith Gap Energy LLC, Prairie Breeze Wind Energy LLC, Sheldon Energy LLC, Spring Canyon Energy LLC, Spindle Hill Energy LLC, Stony Creek Energy LLC, Vantage Wind Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC.
Description: Quarterly Land Acquisition Report of Beech Ridge Energy LLC, et al.
Filed Date: 7/25/14.
Accession Number: 20140725–5025.
Comments Due: 5 p.m. ET 8/15/14.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF14–642–000.
Applicants: CII Methane Management IV, LLC.
Description: Request for Waiver and Proposed Refund Report of CII Methane Management IV, LLC.
Filed Date: 7/25/14.
Accession Number: 20140725–5022.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–18207 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2480–004.
Applicants: Berkshire Power Company, LLC.
Description: Compliance Filing for Rate Schedule to be effective 7/25/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5086.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER10–3193–005.
Applicants: Brooklyn Navy Yard Cogeneration Partners.
Description: Compliance Filing for Rate Schedule to be effective 7/25/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5073.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2486–000.
Applicants: Covanta Union, LLC.
Description: Notice of Succession to be effective 7/24/2014.
Filed Date: 7/23/14.
Accession Number: 20140723–5126.
Comments Due: 5 p.m. ET 8/13/14.

Docket Numbers: ER14–2487–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–07–24_SA 762 ATC-Dominion Termination to be effective 7/16/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5039.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2488–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–07–24_SA 2680 NSP-Border Winds Energy GIA (J290) to be effective 7/25/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5066.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2489–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position T174; Original Service Agreement No. 3903 to be effective 6/24/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5070.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2490–000.
Applicants: PJM Interconnection, L.L.C.
Description: Service Agreement No. 3333; Queue No. W3–003 to be effective 6/24/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5071.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2491–000.
Applicants: PJM Interconnection, L.L.C.
Description: Service Agreement No. 3186; Queue No. W4–072 to be effective 6/24/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5074.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2492–000.
Applicants: PacifiCorp.
Description: USBR–WAPA Weber Basin Project Agreement Rev 4 to be effective 9/23/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5077.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2493–000.
Applicants: New England Power Company.
Description: New England Power Co. Filing of 6th Rev. Service Agmt. 23 with Narragansett to be effective 9/23/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5081.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2494–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position # Z1–086 Service Agreement No. 3886 to be effective 6/24/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5084.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2495–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 3354; Queue No. X2–054 to be effective 6/24/2014.
Filed Date: 7/24/14.
Accession Number: 20140724–5088.
Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2496–000.

Applicants: New England Power Company.

Description: New England Power Filing of LGIA with Deepwater Block Island Wind, LLC to be effective 9/23/2014.

Filed Date: 7/24/14.

Accession Number: 20140724–5089.

Comments Due: 5 p.m. ET 8/14/14.

Docket Numbers: ER14–2497–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits tariff filing per 35: OATT Order No. 792 Compliance Filing to be effective 12/31/9998.

Filed Date: 7/24/14.

Accession Number: 20140724–5096.

Comments Due: 5 p.m. ET 8/14/14.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR13–9–003.

Applicants: North American Electric Reliability Corp.

Description: Petition of the North American Electric Reliability Corporation for Approval of a Supplemental Assessment to Fund the 2014 Budget of Peak Reliability, Inc.

Filed Date: 7/23/14.

Accession Number: 20140723–5121.

Comments Due: 5 p.m. ET 8/22/14.

Docket Numbers: RR14–5–000.

Applicants: North American Electric Reliability Corp.

Description: North American Electric Reliability Corporation Five-Year Electric Reliability Organization (ERO) Performance Assessment Report, submitted in accordance with 18 CFR § 39.3(c).

Filed Date: 7/21/14.

Accession Number: 20140721–5166.

Comments Due: 5 p.m. ET 8/20/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 24, 2014. .

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–18139 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–115–000.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: Northern States Power Company, a Wisconsin corporation submits Application for Authorization to Acquire Jurisdictional Transmission Assets.

Filed Date: 7/22/14.

Accession Number: 20140723–0002.

Comments Due: 5 p.m. ET 8/12/14.

Docket Numbers: EC14–116–000.

Applicants: American Electric Power Service Corporation, AEP Ohio Transmission Company, Inc.

Description: Application Under Section 203 of the Federal Power Act of American Electric Power Service Corporation on behalf of AEP Ohio Transmission Company, Inc.

Filed Date: 7/25/14.

Accession Number: 20140725–5089.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: EC14–117–000.

Applicants: American Electric Power Service Corporation, AEP Ohio Transmission Company, Inc.

Description: Application Under Section 203 of the Federal Power Act of American Electric Power Service Corporation on behalf of AEP Ohio Transmission Company, Inc.

Filed Date: 7/25/14.

Accession Number: 20140725–5092.

Comments Due: 5 p.m. ET 8/15/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3108–001.

Applicants: Innovative Energy Systems, LLC.

Description: Compliance Filing for Electric Tariff to be effective 7/25/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5110.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER11–3109–001.

Applicants: Seneca Energy, II LLC.

Description: Compliance Filing for Electric Tariff to be effective 7/25/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5109.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER14–2483–000.

Applicants: Sunbury Generation LP.

Description: Sunbury Generation LP submits notice of cancellation for its cost-based Reactive Supply and Voltage Control from Generation Sources Services tariff.

Filed Date: 7/21/14.

Accession Number: 20140723–0001.

Comments Due: 5 p.m. ET 8/11/14.

Docket Numbers: ER14–2506–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: Cost Reimbursement Agreement between NiMo and RG&E SA# 2135 to be effective 3/31/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5071.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER14–2507–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–07–25_SA 2681 MidAmerican Neal 4 GFA to be effective 7/26/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5072.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER14–2507–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–07–25_SA 2681 MidAmerican Neal 4 GFA Supplement to be effective N/A.

Filed Date: 7/25/14.

Accession Number: 20140725–5081.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER14–2508–000.

Applicants: PacifiCorp.

Description: Termination of PAC Energy Construction Agreement (Chehalis) to be effective 10/7/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5077.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER14–2509–000.

Applicants: PacifiCorp.

Description: BPA NITSA (Yakama) Rev 6 to be effective 7/14/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5078.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER14–2510–000.

Applicants: PJM Interconnection, L.L.C.

Description: Service Agreement No. 3887; Queue No. W2–014 to be effective 6/25/2014.

Filed Date: 7/25/14.

Accession Number: 20140725–5104.

Comments Due: 5 p.m. ET 8/15/14.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA14–2–000.

Applicants: Blackstone Wind Farm, LLC, Blackstone Wind Farm II LLC, Headwaters Wind Farm LLC, High Trail Wind Farm, LLC, Meadow Lake Wind Farm LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC, Old Trail Wind Farm, LLC, Paulding Wind Farm II LLC, Sustaining Power Solutions LLC.

Description: Quarterly Land Acquisition Report of Blackstone Wind Farm, LLC, *et al.*

Filed Date: 7/25/14.

Accession Number: 20140725–5107.

Comments Due: 5 p.m. ET 8/15/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–18208 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–493–000]

Southern Natural Gas Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Zone 3 Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Zone 3 Expansion Project involving construction and operation of facilities by Southern Natural Gas Company, LLC (Southern) in Marengo County, Alabama, Duval and Nassau Counties, Florida, Glynn, Liberty, Upson and Wayne Counties, Georgia, and Saint Bernard Parish, Louisiana. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on August 27, 2014.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Southern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Southern proposes to provide approximately 235 million cubic feet per day of new firm transportation capacity to certain customers in its system's Zone 3 from new supply sources at the existing Elba Express Company, L.L.C. interconnections with Transcontinental Gas Pipe Line Company in Hart County, Georgia and Anderson County, South Carolina. Construction of the project is planned to begin soon after June 1, 2015 in order to meet the proposed in-service date of June 1, 2016. The Zone 3 Expansion project would include the following facilities:

- 3.3 miles of 36-inch-diameter looping [1] along with pig [2] receiving/launching facilities along the south side of Southern's 30-inch-diameter South Main 2nd Loop Line in Marengo County, Alabama;
- one new 4,000-horsepower (hp) compressor unit at Southern's existing Thomaston Compressor Station in Upson County, Georgia;
- abandonment of a 4,700-hp compressor unit 15 at Southern's Toca Compressor Station in Bernard Parish, Louisiana;
- installation/relocation of the 4,700 hp compressor unit 15 along with new gas cooling at Southern's Riceboro Compressor Station in Liberty County, Georgia;
- installation of gas cooling at Southern's Brookman Compressor Station in Glynn County, Georgia;
- one new Hilliard Compressor Station with a 4,700 hp unit in Nassau County, Florida (compressor station site previously certificated in the CP05–388 Southern Cypress Pipeline Project);
- upgrade of the Jesup Meter Station in Wayne County, Georgia; and
- installation of up to three taps and Supervisory Control and Data Acquisition systems along Southern's Cypress Line in Nassau/Duval Counties, Florida.

A map depicting the general location of the project facilities is included in appendix 1.[3]

Land Requirements for Construction

Southern proposes to use 137 acres of land for construction of the project, and would retain 20 acres of new permanent right-of-way for operations. The 3.3-mile loop pipeline portion would require 86 acres for construction and would retain 14 acres for operations. The remaining 72 acres would be restored and allowed to revert to former uses. The compressor station portion of the project would require 51 acres for construction and retain 4.5 acres of new permanent right-of-way for operations.

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources, fisheries, and wetlands;
- vegetation, wildlife, threatened and endangered species, and migratory birds;
- cultural resources;
- land use and cumulative impacts;
- air quality and noise; and
- public safety.

We will also evaluate reasonable alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[5] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[6] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 27, 2014.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP14–493–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in

[4] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[6] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP14–493). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18188 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–2500–000]

Newark Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Newark Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 18, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 28, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–18210 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–2498–000]

EIF Newark, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EIF Newark, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 18, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 28, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–18209 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1256–031]

Loup River Public Power District; Notice of Teleconference

a. *Date and Time of Meeting:* Wednesday, August 13, 2014 at 10:00 a.m. (Eastern Daylight Time).

b. *FERC Contact:* Isis Johnson, Phone: (202) 502–6346, Email: *isis.johnson@ferc.gov.*

c. *Purpose of Meeting:* To discuss the U.S. Fish and Wildlife Service's response to Commission staff's June 4, 2014 request to initiate formal consultation on the determinations of effect for federally listed species. These effects are described in the Draft Environmental Assessment for the Loup River Hydroelectric Project, issued on May 22, 2014.

d. *Proposed Agenda:*

1. Introductions
2. Discussion of the Environmental Baseline
3. Clarification of Project Effects Comments
4. Questions
5. Summary

e. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please call Isis Johnson at (202) 502–6346 by August 11, 2014, to RSVP and to receive specific instructions on how to participate.

Dated: July 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18190 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL14–84–000; et al.]

Allco Renewable Energy Limited; Notice of Petition for Enforcement

QF11–193–001
QF11–194–001
QF11–195–001
QF11–196–001
QF11–197–001
QF11–198–001
QF11–199–001
QF11–200–001
QF11–201–001
QF11–202–001
QF11–203–001

Take notice that on July 28, 2014, pursuant to section 210(h)(2)(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(h), Allco Renewable Energy Limited (Allco), hereby petitions the Federal Energy Regulatory Commission (Commission) to initiate an enforcement action against the Massachusetts Department of Public Utilities (DPU) to remedy the DPU's improper implementation of PURPA by creating a rule with respect to rates under PURPA section 210(f)(1) that eliminates a qualifying facility's ability to seek an avoided cost long-run rate pursuant to 18 CFR 292.304)(d)(2)(ii).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 18, 2014.

Dated: July 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18189 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD14–23–000]

Amador Water Agency; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On July 14, 2014, the Amador Water Agency filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Tanner In-Conduit Hydroelectric Project would have an installed capacity of 160 kilowatts (kW) and would utilize water from an existing 20-inch diameter pipeline from a pressure reducing station that feeds both the Tanner Water Treatment Plant and a small storage reservoir. The project would be located near the town of Sutter Creek in Amador County, California.

Applicant Contact: Chris McKeage, Amador Water Agency, 12800 Ridge Road, Sutter Creek, CA 95685, Phone No. (209) 223–3018.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 86-foot-long, 20-inch-diameter intake pipe from the pressure reducing station; (3) a proposed powerhouse containing two generating units with a total installed capacity of 160 kW; (4) a proposed 27-foot-long, 16-inch-diameter discharge pipe back into the pressure reduce station; and (5) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 564 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA.	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA.	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (e.g., CD14–23–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: July 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18191 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2013).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–523–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

Take notice that on July 18, 2014, Equitrans, L.P. (Equitrans), pursuant to the blanket certificate authorization granted to Equitrans on October 20, 1998, in Docket No. CP96–532–000,[1] filed an application in accordance to sections 157.205, 157.208, and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authority to construct and operate its H–312 Pipeline Project (Project) in Harrison County, West Virginia. The proposed new facilities will increase the capacity on Equitrans' mainline system, thereby enabling Equitrans to accommodate additional volumes expected from a non-affiliated producer into Equitrans' existing H–509 pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

To alleviate the anticipated constraint on the existing H–509 pipeline, Equitrans proposes to construct the Project which includes approximately 49,055 feet (or 9.29 miles) of a 12-inch diameter natural gas pipeline, with a maximum allowable operating pressure (MAOP) of 1,200 pounds per square inches (psig), and appurtenant facilities. The Project starts at the existing Morrison Interconnect in Wilsonburg, West Virginia and runs north to the existing Lumberport Overpressure Protection Station and H–557 pipeline in Lumberport, West Virginia. The Project will include 9.29 miles of right-of-way (ROW) primarily adjacent to an existing ROW. The proposed facilities will enable Equitrans to provide additional capacity of 100,000 Dth per day of incremental natural gas volumes to be received onto the existing H–509 pipeline. Equitrans conducted a non-binding open season, from June 10, 2013 through July 10, 2013 and a reverse open season from April 17, 2014 to May 2, 2014. No capacity was turned back to Equitrans. The total estimated cost of the proposed project is $26,942,253.

Any questions concerning this application may be directed to Paul W. Diehl, Senior Counsel—Midstream, at

[1] 85 FERC ¶ 61,089 (1998).

EQT Corporation, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222, by phone at (412) 395–5540, or by email to *PDiehl@eqt.com*.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866)206–3676, or, for TTY, contact (202)502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: July 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18192 Filed 7–31–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2014–0445; FRL–9914–68–OPA]

Proposed Information Collection Request; Comment Request; Implementation of the Oil Pollution Act Facility Response Plan Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Oil Pollution Act Facility Response Plans—40 CFR part 112.20'' (EPA ICR No. 1630.12, OMB Control No. 2050–0135) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through October 31, 2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before September 30, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPA–2014–0445 referencing the Docket ID numbers provided for each item in the text, online using *www.regulations.gov* (our preferred method), by email to *swackhammer.j-troy@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: J. Troy Swackhammer, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–1966; fax number: 202–564–2625; email address: *swackhammer.j-troy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The authority for EPA's facility response plan (FRP) requirements is derived from section 311(j)(5) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR 112.20 and 112.21 and related appendices. All FRP reporting and recordkeeping activities are mandatory. This information collection request renewal has not substantively changed from the last ICR approval (October 25, 2011). The purpose of an FRP is to help an owner or operator identify the

necessary resources to respond to an oil spill in a timely manner. If implemented effectively, the FRP will reduce the impact and severity of oil spills and may prevent spills because of the identification of risks at the facility. Although the owner or operator is the primary data user, EPA also uses the data in certain situations to ensure that facilities comply with the regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can greatly assist local emergency preparedness planning efforts. The EPA reviews all submitted FRPs and must approve FRPs for those facilities whose discharges may cause significant and substantial harm to the environment in order to ensure that facilities believed to pose the highest risk have planned for adequate resources and procedures to respond to a spill. (See 40 CFR 112.20(f)(3) for further information about the criteria for significant and substantial harm.) None of the information collected under the FRP rule is believed to be confidential. One of the criteria necessary for information to be classified as confidential (40 CFR 2.208) is that a business must show that it has previously taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures. The EPA has provided no assurances of confidentiality to facility owners or operators when they file their FRPs.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are the owner or operator of a facility that is required to have a spill prevention, control, and countermeasure (SPCC) plan under the Oil Pollution Prevention regulation (40 CFR part 112) and that could cause substantial harm to the environment must prepare and submit to EPA an FRP. The criteria for a substantial harm facility include: (1) The facility transfers oil over water to or from a vessel and has a total storage capacity of greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to one million gallons and one or more of the following harm factors are met: Insufficient secondary containment; proximity to fish and wildlife and sensitive environments; a discharge of oil could shut down a drinking water intake; the facility experienced a reportable oil discharge of 10,000 gallons or more in last 5 years; or other factors considered by the Regional Administrator. (See 40 CFR 112.20(b)(1) and (f) for further information about the criteria for substantial harm.)

Respondent's obligation to respond: Mandatory under section 311(j)(5) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

Estimated number of respondents: 22,966 (total).

Frequency of response: Less than once per year.

Total estimated burden: 455,743 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost (with overhead): $17,630,700 (per year), includes $14,763 annualized capital or operation & maintenance costs.

Changes in estimates: The EPA estimates that there is slight reduction in the hours of total estimated respondent burden (approximate reduction of 7,676 hours) compared with the ICR currently approved by OMB. This estimate is based on EPA's current inventory of facilities that have submitted and are maintaining an FRP as per 40 CFR part 112 versus the projected inventory. The EPA has not amended the FRP regulation since the last ICR renewal that would affect the per-facility burden. The EPA will consider the comments received and amend the ICR as appropriate.

Dated: July 28, 2014.

Lawrence M. Stanton,

Office Director, Office of Emergency Management.

[FR Doc. 2014–18194 Filed 7–31–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9016–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/21/2014 Through 07/25/2014 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140202, Final EIS, NPS, MD, Antietam National Battlefield, Monocacy National Battlefield, Manassas National Battlefield Park, Final White-tailed Deer Management Plan, *Review Period Ends:* 09/03/2014, *Contact:* Tracy Atkins 303–969–2325.

EIS No. 20140203, Final EIS, USFS, CO, Gore Creek Restoration, *Review Period Ends:* 09/02/2014, *Contact:* Doug Myhre 970–638–4178.

EIS No. 20140204, Final EIS, USACE, NC, Village of Bald Head Island Shoreline Stabilization Project, *Review Period Ends:* 09/02/2014, *Contact:* Ronnie Smith 910–251–4829.

EIS No. 20140205, Final EIS, USFWS, OH, Ballville Dam Project, *Review Period Ends:* 09/02/2014, *Contact:* Brian Elkington 612–713–5168.

EIS No. 20140206, Draft EIS, FHWA, NY, Portageville Bridge Project, Comment Period Ends: 09/15/2014, *Contact:* Jonathan McDade 518–431–4127.

EIS No. 20140207, Final EIS, USACE, SC, Haile Gold Mine Project, *Review Period Ends:* 09/02/2014, *Contact:* Dr. Richard L. Darden 843–329–8043.

EIS No. 20140208, Final EIS, NOAA, MI, Thunder Bay National Marine Sanctuary Boundary Expansion, *Review Period Ends:* 09/02/2014, *Contact:* Helene Scalliet 301–713–7281.

EIS No. 20140209, Draft EIS, USACE, CA, San Elijo Lagoon Restoration Project, *Comment Period Ends:* 09/29/2014, *Contact:* Meris Bantilan-Smith 760–602–4836.

Dated: July 29, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–18272 Filed 7–31–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2014–0564; FRL–9914–72–ORD]

Human Studies Review Board; Notification of a Public Webinar/Teleconference

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Office of the Science Advisor announces a public Webinar/teleconference of the Human Studies Review Board (HSRB) to discuss its draft report on the HSRB meeting held August 15, 2014.

DATES: The Webinar/teleconference will be held on Friday, August 15, 2014,

from approximately 2:00 p.m. to approximately 3:30 p.m. Eastern Time. Comments may be submitted on or before Friday, August 8, 2014. Information regarding the HSRB final meeting report will be found at *http://www.epa.gov/osa/hsrb* and *http://www.regulations.gov* or from the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Webcast: This meeting may be webcast. Please refer to the HSRB Web site *http://www.epa.gov/osa/hsrb* for information on how to access the webcast. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2014–0564, by one of the following methods:

Internet: http://www.regulations.gov: Follow the Web site instructions for submitting comments.

Email: ORD.Docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center EPA/DC, ORD Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue NW., Washington, DC 20460. The Reading Room's hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available online at *http://www.epa.gov/epahome/dockets.htm*.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2014–0564. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Any members of the public who wish to receive further information about this Webinar/Teleconference should contact Jim Downing at telephone number (202) 564–2468; fax (202) 564–2070; email address *downing.jim@epa.gov*; mailing address Environmental Protection Agency, Office of the Science Advisor, Mail Code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information concerning the HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb*.

SUPPLEMENTARY INFORMATION:

Location: The meeting will take place via the Internet and telephone only. Access information can be found on the HSRB Web site: *http://www.epa.gov/osa/hsrb/* or by contacting the persons listed under the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

Meeting access: For detailed information on access or services for individuals with disabilities, please contact Jim Downing at least ten business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT**, so that appropriate arrangements can be made.

Procedures for providing public input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Section I, ''Public Meeting,'' under subsection D, ''How may I participate in this meeting?'' of this notice.

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by the EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act. Since other entities may also be interested, the EPA has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access electronic copies of this document and other related information?

You may use *http://www.regulations.gov,* or you may access this **Federal Register** document via the EPA's internet site under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue NW., Washington, DC 20460; its hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744, or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates regarding the Public Reading Room access are available at *http://www.epa.gov/epahome/dockets.htm*.

C. What should I consider as I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data used that support your views.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

D. How may I participate in this meeting?

You may participate by providing comments in this meeting by following the instructions in this section. To ensure proper receipt of your comments by the EPA, it is imperative that you identify Docket ID No. EPA–HQ–ORD–2014–0564 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to and including Friday, August 8, 2014. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments during the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to Jim Downing under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, Friday, August 8, 2014, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. *Written comments.* Please submit written comments prior to the meeting. For the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this teleconference. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, Friday, August 8, 2014. You should submit your comments using the instructions in Section I, under subsection C, ''What should I consider as I prepare my comments for the EPA?'' In addition, the EPA also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App. 2 Section 9. The HSRB provides advice, information, and recommendations to the EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen the EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through the EPA Science Advisor.

1. *Topics for Discussion.* The HSRB will be reviewing its draft report from the June 11, 2014 HSRB meeting. The HSRB may also discuss planning for future HSRB meetings. Background on the June 11, 2014 HSRB meeting can be found at the HSRB Web site: *http://www.epa.gov/osa/hsrb*. The June 11, 2014 meeting draft report is available. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from regulations.gov and the HSRB Web site at *http://www.epa.gov/osa/hsrb*. For questions on document availability or if you do not have internet access, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information regarding the HSRB final meeting report will be found at *http://www.epa.gov/osa/hsrb* and *http://www.regulations.gov* or from the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 28, 2014.

Robert Kavlock,

Interim Science Advisor.

[FR Doc. 2014–18221 Filed 7–31–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 30, 2014. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0685.

Title: Updating Maximum Permitted Rates for Regulated Services and Equipment, FCC Form 1210; Annual Updating of Maximum Permitted Rates for Regulated Cable Services, FCC Form 1240.

Form Number: FCC Form 1210 and FCC Form 1240.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 3,400 respondents; 5,350 responses.

Estimated Time per Response: 1 hour to 15 hours.

Frequency of Response: Annual reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 4(i) and 623 of Communications Act of 1934, as amended.

Total Annual Burden: 44,800 hours.

Total Annual Cost: $3,196,875.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Cable operators use FCC Form 1210 to file for adjustments in maximum permitted rates for regulated services to reflect external costs. Regulated cable operators submit this form to local franchising authorities.

FCC Form 1240 is filed by cable operators seeking to adjust maximum permitted rates for regulated cable services to reflect changes in external costs.

Cable operators submit Form 1240 to their respective local franchising authorities (''LFAs'') to justify rates for the basic service tier and related equipment or with the Commission (in situations where the Commission has assumed jurisdiction).

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. 2014–18214 Filed 7–31–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 04–286; DA 14–1040]

Sixth Meeting of the Advisory Committee for the 2015 World Radiocommunication Conference

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the sixth meeting of the WRC–15 Advisory Committee will be held on August 27, 2014, at the Federal Communications Commission. The Advisory Committee will consider recommendations from its Informal Working Groups.

DATES: August 27, 2014; 11:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, Designated Federal Official, WRC–15 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–15 Advisory Committee to provide advice, technical support and recommendations relating to the preparation for the 2015 World Radiocommunication Conference (WRC–15).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the WRC–15 Advisory Committee. Additional information regarding the WRC–15 Advisory Committee is available on the Advisory Committee's Web site, *http://www.fcc.gov/encyclopedia/world-radiocommunication-conference-wrc-15.* The meeting is open to the public. The meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live.* Comments may be presented at the WRC–15 Advisory Committee meeting or in advance of the meeting by email to: *WRC–15@fcc.gov.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted, but may not be possible to accommodate.

The proposed agenda for the sixth meeting is as follows:

Agenda

Sixth Meeting of the WRC–15 Advisory Committee, Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington, DC 20554.

August 27, 2014; 11:00 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fifth Meeting
4. IWG Reports and Documents Relating to Preliminary Views and Draft Proposals
5. Future Meetings
6. Other Business

Federal Communications Commission.

Mindel De La Torre,

Chief, International Bureau.

[FR Doc. 2014–18183 Filed 7–31–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of

policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: July 28, 2014.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10505	GreenChoice Bank, fsb	Chicago	IL	7/25/2014

[FR Doc. 2014–18088 Filed 7–31–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 2014.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *ViewPoint Financial Group, Inc.,* Plano, Texas; to merge with LegacyTexas Group, Inc., and thereby indirectly acquire LegacyTexas Bank, both in Plano, Texas.

Board of Governors of the Federal Reserve System, July 29, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–18141 Filed 7–31–14; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2014–03; Docket No. 2014–0002; Sequence 26]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Advisory Committee Meeting and Conference Calls

AGENCY: Office of Government-Wide Policy, General Services Administration (GSA).

ACTION: Meeting Notice.

SUMMARY: This notice provides the schedule for conference calls of two task groups of GSA's Green Building Advisory Committee. Notice of these conference calls is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2). The calls are open for the public to listen in. Interested individuals must register to attend as directed below.

DATES: *Task group conference call dates:* The conference calls will be held according to the following schedule:

The *Building Labels* task group will hold conference calls on Monday, August 18, 2014 and Monday, August 25, 2014, from 11:00 a.m. to 12:00 p.m. eastern daylight time.

The *Net Zero* task group will hold conference calls on Tuesday, August 19, 2014 and Tuesday, August 26, 2014 from 2:00 p.m. to 3:00 p.m. eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, General Services Administration, 1800 F Street NW., Washington, DC 20405, telephone 202–219–1121 (**Note:** this is not a toll-free number). More information about the Committee and its task groups is available at *http://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION:

Procedures for Attendance and Public Comment: Contact Ken Sandler at *ken.sandler@gsa.gov* to register to listen in to the conference calls. To register, submit your full name, organization, email address, and phone number. Requests must be received by 5:00 p.m. Eastern time, Friday, August 15, 2014. (GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the Web meeting site in advance of calls is recommended.)

Background: The Administrator of GSA established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee advises GSA on the rapid transformation of the Federal building portfolio to sustainable technologies and practices.

This notice follows a June 4, 2014 notice (**Federal Register**/Vol. 79, No. 107) providing information on the Wednesday, September 10, 2014 meeting of the Advisory Committee and previous conference calls of the task groups.

The *Net Zero* task group is pursuing the motion of a committee member to ''Strengthen net zero energy commitments for new and existing federal buildings and federal leased buildings.'' *The Building Labels* task group is pursuing the motion of a committee member to ''Require building performance labels [for federal buildings], including current energy and environmental performance.''

The conference calls will focus on how the task groups can best refine these motions into consensus proposals of each group to the full Committee,

which will in turn decide whether to proceed with formal advice to GSA based upon these recommendations.

Dated: July 28, 2014.

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Green Buildings, General Services Administration.

[FR Doc. 2014–18280 Filed 7–31–14; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Jun Fu, Ph.D., University of Texas MD Anderson Cancer Center: Based on the Respondent's admission, the report of an inquiry conducted by the University of Texas MD Anderson Cancer Center (MDACC), and analysis conducted by ORI in its oversight review, ORI found that Dr. Jun Fu, former Postdoctoral Fellow, Department of Neuro-Oncology, MDACC, engaged in research misconduct in research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), grants CA56041 and CA127001.

The Respondent has admitted to knowingly and intentionally falsifying Figure 8a in the following publication:

• ''Novel HSP90 inhibitor NVP–HSP990 targets cell-cycle regulators to ablate Olig2-positive glioma tumor-initiating cells.'' *Cancer Res.* 73(10):3062–74, 2013 May 15.

Specifically, the Respondent falsified survival times of mice to show that NVP–HSP990 prolonged survival rates in glioblastoma tumor bearing mice when experimental data were incomplete and unusable.

As a result of its inquiry, MDACC has recommended that the senior author of this paper take any appropriate steps with the journal to correct the scientific literature.

Dr. Fu has entered into a Voluntary Settlement Agreement (Agreement) and has voluntarily agreed for a period of two (2) years, beginning on July 15, 2014:

(1) To have his research supervised; Respondent agrees that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research; Respondent agrees that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Donald Wright,

Acting Director, Office of Research Integrity.

[FR Doc. 2014–18173 Filed 7–31–14; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–0109]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Respiratory Protective Devices—42 CFR part 84—Regulation—(0920–0109)—Revision—National Institute for Occupational Safety and Health (NIOSH), of the Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This data collection was formerly named Respiratory Protective Devices 30 CFR part 11 but in 1995, the respirator standard was moved to 42 CFR Part 84. The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 et seq., and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have, as their basis, the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters.

Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH-approved respirators. These regulations also establish methods for respirator manufacturers to submit respirators for testing under the regulation and have them certified as NIOSH-approved if they meet the criteria given in the above regulation.

NIOSH, in accordance with 42 CFR Part 84: (1) Issues certificates of approval for respirators which have met specified construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged applicants for testing and certification, and (5) establishes approval labeling requirements. Information is collected from those who request services under 42 CFR Part 84 in order to properly establish the scope and intent of request.

Information collected from requests for respirator approval functions includes contact information and information about factors likely to affect respirator performance and use. Such information includes, but is not necessarily limited to, respirator design, manufacturing methods and materials, quality assurance plans and procedures, and user instruction and draft labels, as specified in the regulation.

The main instrument for data collection for respirator approval functions is the Standard Application for the Approval of Respirators (SAF), currently Version 7. A replacement instrument which will collect the same information is in development.

Respirator manufacturers are the respondents (estimated to average 63 each year over the years 2014–2016) and upon completion of the SAF their requests for approval are evaluated. The applications are submitted at will and the most reasonable prediction of respondents is the number from the most recent year, 63 in 2013. The decrease is likely due to random fluctuations and changes in business conditions. No survey was conducted to more thoroughly analyze the reasons for the change in number of respondents. Although there is no cost to respondents to submit other than their time to participate, respondents requesting respirator approval are required to submit fees for necessary testing as specified in 42 CFR Parts 84.20–22, 84.66, 84.258 and 84.1102. In calendar year 2013 $449,610 was accepted.

Applicants are required to provide test data that shows that the manufacturer is capable of ensuring that the respirator is capable of meeting the specified requirements in 42 CFR Part 84. The requirement for submitted test data is likely to be satisfied by standard testing performed by the manufacturer, and is not required to follow the relevant NIOSH Standard Test Procedures. As additional testing is not required, providing proof that an adequate test has been performed is limited to providing existing paperwork.

42 CFR Part 84 approvals offer corroboration that approved respirators are produced to certain quality standards. Although 42 CFR Part 84 Subpart E prescribes certain quality standards, it is not expected that requiring approved quality standards will impose an additional cost burden over similarly effective quality standards that are not approved under 42 CFR Part 84.

Manufacturers with current approvals are subject to site audits by the Institute or its agents under 42 CFR 84.43. There is no fee or form associated with audits. Audits may occur periodically or as a result of a reported issue. Sixty site audits were scheduled for the 2013 calendar year. The total request burden hours are 102,429.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Business or other for-profit	Standard Application for the Approval of Respirators Version 7 and Version 8.	63	7	229
Business or other for-profit	Audit (42 CFR 84.43)	60	1	24

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–18057 Filed 7–31–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–222–92]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 2, 2014.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Independent Rural Health Clinic/Freestanding Federally Qualified Health Center Cost Report; *Use:* Providers of services participating in the Medicare program are required under sections 1815(a) and 1861(v)(1)(A) of the Social Security Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. In addition, regulations at 42 CFR 413.20 and 413.24 require adequate cost data and cost reports from providers on an annual basis. The Form CMS–222–92 cost report is needed to determine the provider's reasonable costs incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or due from the provider. *Form Number:* CMS–222–92 (OMB control number: 0938–0107); *Frequency:* Annually; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 3,264; *Total Annual Responses:* 3,264; *Total Annual Hours:* 163,200. (For policy questions regarding this collection contact Leonard Fisher at 410–786–4574.)

Dated: July 28, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–18040 Filed 7–31–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10292 and CMS–10357]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 30, 2014.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number_____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10292 State Medicaid HIT Plan, Planning Advance Planning Document, and Implementation Advance Planning Document for Section 4201 of the Recovery Act

CMS–10357 Letter Requesting Waiver of Medicare/Medicaid Enrollment Application Fee; Submission of Fingerprints; Submission of Medicaid Identifying Information; Medicaid Site Visit and Rescreening

Under the Paperwork Reduction Act (PRA)(44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Medicaid HIT Plan, Planning Advance Planning Document, and Implementation Advance Planning Document for Section 4201 of the Recovery Act; *Use:* To assess the appropriateness of state requests for the administrative Federal financial participation for expenditures under their Medicaid Electronic Health Record Incentive Program related to health information exchange, our staff will review the submitted information and documentation to make an approval determination of the state advance planning document. *Form Number:* CMS–10292 (OMB control number 0938–1088); *Frequency:* Once and occasionally; *Affected Public:* State, Local, and Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 896. (For policy questions regarding this collection contact Thomas Romano at 410–786–0465).

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection: *Title of Information Collection:* Letter Requesting Waiver of Medicare/Medicaid Enrollment Application Fee; Submission of Fingerprints; Submission of Medicaid Identifying Information; Medicaid Site Visit and Rescreening; *Use:* Section 6401 of the Affordable Care Act (ACA) establishes a number of important payment safeguard provisions. The provisions are designed to improve the integrity of the Medicare, Medicaid, and Children's Health Insurance Programs (CHIP) so as to reduce fraud, waste and abuse. The provisions include the following:

- Medicare Enrollment Application Fee Waiver Request: Certain providers and suppliers enrolling in Medicare will be required to submit a fee with their application. Under 42 CFR 424.514, if the applicant believes it has a hardship that justifies a waiver of the application fee, it may submit a letter describing said hardship.
- Fingerprints: Certain providers and suppliers enrolling in Medicare, Medicaid, and CHIP will be required to submit fingerprints—either digitally or via the FD–258 standard fingerprint card—of their owners.
- Suspension of Medicaid Payments: A State Medicaid agency shall suspend all Medicaid payments to a provider when there is a pending investigation of a credible allegation of Medicaid fraud against an individual or entity, unless it has good cause not to suspend payments or to suspend payment only in part. The State Medicaid agency may suspend payments without first notifying the provider of its intention to suspend such payments. A provider may request, and must be granted, administrative review where State law so requires.
- Collection of Social Security Numbers (SSNs) and Dates of Birth (DOBs) for Medicaid and CHIP Providers: The State Medicaid agency or CHIP agency must require that all persons with an ownership or control interest in a Medicaid or CHIP provider submit their SSNs and DOBs.
- Site Visits for Medicaid-only or CHIP-only providers: A State Medicaid agency or CHIP agency must conduct on-site visits for providers it determines to be ''moderate'' or ''high'' categorical risk.
- Rescreening of Medicaid and CHIP Providers Every 5 Years: A State Medicaid agency or CHIP agency must screen all providers at least every 5 years. This is consistent with the Medicare requirement in current 42 CFR 424.515 that providers and suppliers revalidate their enrollment information at least every 5 years.

Form Number: CMS–10357 (OMB control number: 0938–1137); *Frequency:* On occasion; *Affected Public:* Private sector—Business or for-profit and Not-for-profit institutions and State, Local, or Tribal Governments; *Number of Respondents:* 960,981; *Total Annual Responses:* 960,981; *Total Annual Hours:* 1,248,082. (For policy questions regarding this collection contact Frank Whelan at 410–786–1302).

Dated: July 28, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–18042 Filed 7–31–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: State Plan for the Temporary Assistance for Needy Families (TANF).

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline specifying how the state's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. It is used to provide the public with information about the program.

Authority to require States to submit a State TANF plan is contained in section 402 of the Social Security Act, as amended by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States are required to submit new plans periodically (i.e., within a 27-month period).

We are proposing to continue the information collection without change.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title Amendments	18	1	3	54
State TANF plan	18	1	30	540

Estimated Total Annual Burden Hours: 594.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–18054 Filed 7–31–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Computer Matching Agreement

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of a Computer Matching Program.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 522a), as amended, OCSE is publishing notice of a computer matching program between OCSE and state agencies administering the Supplemental Nutrition Assistance Program (SNAP).

DATES: On July 15, 2014, HHS sent a report of the Computer Matching Program to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) of the Privacy Act. HHS invites interested parties to review and submit written data, comments, or arguments to the agency about the matching program until September 2, 2014.

ADDRESSES: Interested parties may submit written comments on this notice to Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447. Comments received will be available for public inspection at this address from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Linda Deimeke, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor East, Washington, DC 20447, 202–401–5439.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended, provides for certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records are matched with other federal, state, or local government records. The Privacy Act requires agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agency or agencies participating in the matching programs.

2. Provide notification to applicants and beneficiaries that their records are subject to matching.

3. Verify information produced by such matching program before reducing, making a final denial of, suspending, or terminating an individual's benefits or payments.

4. Publish notice of the computer matching program in the **Federal Register**.

5. Furnish reports about the matching program to Congress and the OMB.

6. Obtain the approval of the matching agreement by the Data Integrity Board of any federal agency participating in a matching program.

This matching program meets these requirements.

Dated: July 28, 2014.

Yvette Hilderson Riddick,

Director, Division of Policy and Training, Office of Child Support Enforcement.

Notice of New Computer Matching Program

A. Participating Agencies

The participating agencies are the Office of Child Support Enforcement (OCSE), which is the ''source agency,'' and state agencies administering the Supplemental Nutrition Assistance Program (SNAP), which are the ''non-federal agencies.''

B. Purpose of the Matching Program

The purpose of the matching program is to provide new hire, quarterly wage, and unemployment insurance information from OCSE's National Directory of New Hires (NDNH) to state agencies administering SNAP to assist in establishing or verifying the eligibility for assistance, reducing payment errors, and maintaining program integrity, including determining whether duplicate participation exists or if the client resides in another state. The state agencies administering SNAP may also use the NDNH information for the secondary purpose of updating the recipients' reported participation in work activities and updating recipients' and their employers' contact information maintained by the state agencies.

C. Authority for Conducting the Match

The authority for conducting the matching program is contained in section 453(j)(10) of the Social Security Act (42 U.S.C. 653(j)(10)). The Agriculture Act of 2014, Pub. L. 113–079, amended section 11(e) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020(e)(24)) by adding the requirement

that the State agency shall request wage data directly from the National Directory of New Hires established under section 453(i) of the Social Security Act (42 U.S.C. 653(i)) relevant to determining eligibility to receive supplemental nutrition assistance program benefits and determining the correct amount of those benefits at the time of certification;

D. Categories of Individuals Involved and Identification of Records Used in the Matching Program

The categories of individuals involved in the matching program are adult members of households that receive or have applied for SNAP benefits. The system of records maintained by OCSE from which records will be disclosed for the purpose of this matching program is the ''OCSE National Directory of New Hires'' (NDNH), No. 09–80–0381, last published in the **Federal Register** at 76 FR 560, January 5, 2011. The NDNH contains new hire, quarterly wage, and unemployment insurance information. The disclosure of NDNH information by OCSE to the state agencies administering SNAP is a ''routine use'' under this system of records. Records resulting from the matching program and which are disclosed to state agencies administering SNAP include names, Social Security numbers, home addresses, and employment information.

E. Inclusive Dates of the Matching Program

The computer matching agreement will be effective and matching activity may commence the later of the following:

(1) 30 days after this notice is published in the **Federal Register** or (2) 40 days after OCSE sends a report of the matching program to the Congressional committees of jurisdiction under 5 U.S.C. 552a(o)(2)(A), and to OMB, unless OMB disapproves the agreement within the 40-day review period or grants a waiver of 10 days of the 40-day review period. The matching agreement will remain in effect for 18 months from its effective date, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement. The agreement is subject to renewal by the HHS Data Integrity Board for 12 additional months if the matching program will be conducted without any change and OCSE and the state agency certify to the Data Integrity Board in writing that the program has been conducted in compliance with the agreement.

[FR Doc. 2014–18245 Filed 7–31–14; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0005]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Data on Tobacco Products and Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on Generic Clearance for the Collection of Qualitative Data on Tobacco Products and Communications.

DATES: Submit either electronic or written comments on the collection of information by September 30, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for the Collection of Qualitative Data on Tobacco Products and Communications (OMB Control Number 0910—NEW)

Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)), FDA is authorized to conduct educational and public information programs.

In conducting studies relating to the regulation and communications related to tobacco products, FDA will need to employ formative qualitative research including focus groups and/or in-depth interviews (IDIs) to assess knowledge and perceptions about tobacco-related topics with specific target audiences. The information collected will serve two major purposes. First, formative research will provide critical knowledge about target audiences. FDA must first understand people's knowledge and perceptions about tobacco related topics prior to developing survey/research questions as well as stimuli for experimental studies. Second, initial testing will allow FDA to assess consumer understanding of survey/research questions and study stimuli. Focus groups and/or IDIs with a sample of the target audience will allow FDA to refine the survey/research questions and

study stimuli while they are still in the developmental stage. FDA will collect, analyze, and interpret information gathered through this generic clearance in order to: (1) Better understand characteristics of the target audience—its perceptions, knowledge, attitudes, beliefs, and behaviors—and use these in the development of appropriate survey/research questions, study stimuli or communications; (2) more efficiently and effectively design survey/research questions and study stimuli; and (3) more efficiently and effectively design experimental studies.

FDA is requesting approval of this new generic for collecting information through the use of qualitative methods (i.e., individual interviews, small group discussions and focus groups) for studies involving all tobacco products regulated by FDA. This information will be used as a first step to explore concepts of interest and assist in the development of quantitative study proposals, complementing other important research efforts in the Agency. This information may also be used to help identify and develop communication messages, which may be used in education campaigns. Focus groups play an important role in gathering information because they allow for an in-depth understanding of individuals' attitudes, beliefs, motivations, and feelings. Focus group research serves the narrowly defined need for direct and informal public opinion on a specific topic.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
In Person Individual In-Depth Interviews	350	1	350	1	350
General Public Focus Group Interviews	18,850	1	18,850	1.5	28,275
Telephone Screening Interviews	4,800	1	4,800	.08 (5 minutes)	384
Telephone Individual In-Depth Interviews	50	1	50	1	50
Total	24,050				29,059

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents to be included in each new pretest may vary, depending on the nature of the material or message being tested and the target audience. Table 1 provides examples of the types of studies that may be administered and estimated burden levels during the 3-year period. Time to read, view, or listen to the message being tested is built into the ''Hours Per Response'' figures.

Dated: July 29, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18195 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0996]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information concerning requests by sponsors of investigational new drugs and applicants for new drug or biologics licenses for fast track designation as provided in the Guidance for Industry on Fast Track Drug Development Programs: Designation, Development, and Application Review.

DATES: Submit either electronic or written comments on the collection of information by September 30, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA 305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance

the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Fast Track Drug Development Programs: Designation, Development, and Application Review—(OMB Control Number 0910—0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the FD&C Act. The guidance discusses collections of information that are specified under section 506 of the FD&C Act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving the collection of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the Agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the FD&C Act, an applicant who seeks fast track designation is required to submit a request to the Agency showing that the drug product: (1) Is intended for a serious or life-threatening condition and (2) has the potential to address an unmet medical need. Mostly, the Agency expects that information to support a designation request will have been gathered under existing provisions of the FD&C Act, the PHS Act, or the implementing regulations. If such information has already been submitted to the Agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the Agency makes a fast track designation, a sponsor or applicant may submit a premeeting package that may include additional information supporting a request to participate in certain fast track programs. The premeeting package serves as background information for the meeting and should support the intended objectives of the meeting. As with the request for fast track designation, the Agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the FD&C Act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (i.e., foreign studies) and information to support a request for accelerated approval. If such information has already been submitted to FDA, the information may be summarized in the premeeting package. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the FD&C Act, a sponsor must submit sufficient clinical data for the Agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that are not required under section 506(c) of the FD&C Act or any other provision of the FD&C Act.

All forms referred to in the guidance have current OMB approval: Forms FDA 1571 (OMB control number 0910–0014), 356h (OMB control number 0910–0338), and 3397 (OMB control number 0910–0297).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the FD&C Act. The Agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research is approximately 81, and the number of requests received is approximately 115 annually. FDA estimates that the number of hours needed to prepare a request for fast track designation is approximately 60 hours per request.

Not all requests for fast track designation may meet the statutory standard. Of the requests for fast track designation made per year, the Agency granted approximately 100 requests from 81 respondents, and for each of these granted requests a premeeting package was submitted to the Agency. FDA estimates that the preparation hours are approximately 100 hours per premeeting package.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance for industry: Fast track drug development programs: Designation, development, and application review	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Designation Requests	81	1.42	115	60	6,900
Premeeting Packages	81	1.09	88	100	8,800

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Guidance for industry: Fast track drug development programs: Designation, development, and application review	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total	.....	.....	.....	.....	15,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 29, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18168 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1048]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the medical device labeling regulations.

DATES: Submit either electronic or written comments on the collection of information by September 30, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device Labeling Regulations—21 CFR 800, 801, and 809 (OMB Control Number 0910–0485)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded and subject to a regulatory action. Certain provisions under section 502 require manufacturers, importers, and distributors of medical devices to disclose information about themselves or the devices, on the labels or labeling for the devices.

Section 502(b) of the FD&C Act requires that for packaged devices, the label must bear the name and place of business of the manufacturer, packer, or distributor as well as an accurate statement of the quantity of the contents. Section 502(f) of the FD&C Act requires that the labeling for a device must contain adequate directions for use. FDA may however, grant an exemption, if the Agency determines that the adequate directions for use labeling requirements are not necessary for the particular case, as it relates to protection of the public health.

FDA regulations under parts 800, 801, and 809 (21 CFR parts 800, 801, and 809) require disclosure of specific information by manufacturers, importers, and distributors of medical devices about themselves or the devices, on the label or labeling for the devices to health professionals and consumers. FDA issued these regulations under the authority of sections 201, 301, 502, and 701 of the FD&C Act (21 U.S.C. 321, 331, 352, and 371). Most of the regulations under parts 800, 801, and 809 are derived from requirements of section 502 of the FD&C Act, which provides in part, that a device shall be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the device, is false or misleading in any particular way, or fails to contain adequate directions for use.

Recordkeeping Burden

Section 801.150(a)(2) establishes recordkeeping requirements for manufacturers of devices to retain a copy of the agreement containing the specifications for the processing, labeling, or repacking of the device for 2 years after the shipment or delivery of the device. Section 801.150(a)(2) also requires that the subject respondents make copies of this agreement available for inspection at any reasonable hour to any officer or employee of the Department of Health and Human Services (HHS) who requests them.

Section 801.410(e) requires copies of invoices, shipping documents, and records of sale or distribution of all impact resistant lenses, including finished eyeglasses and sunglasses, be maintained for 3 years by the retailer and made available upon request by any officer or employee of FDA or by any other officer or employee acting on behalf of the Secretary of HHS.

Section 801.410(f) requires that the results of impact tests and description of the test method and apparatus be retained for a period of 3 years.

Section 801.421(d) establishes requirements for hearing aid dispensers to retain copies of all physician statements or any waivers of medical evaluation for 3 years after dispensing the hearing aid.

Section 801.430(f) requires manufacturers of menstrual tampons to devise and follow an ongoing sampling plan for measuring the absorbency of menstrual tampons. In addition, manufacturers must use the method and testing parameters described in § 801.430(f).

Section 801.435(g) requires latex condom manufacturers to document and provide, upon request, an appropriate justification for the application of the testing data from one product on any variation of that product to support expiration dating in the user labeling.

Third-Party Disclosure Burden

Sections 800.10(a)(3) and 800.12(c) require that the label for contact lens cleaning solutions bear a prominent statement alerting consumers of the tamper-resistant feature. Further, § 800.12 requires that packaged contact lens cleaning solutions contain a tamper-resistant feature, to prevent malicious adulteration.

Section 800.10(b)(2) requires that the labeling for liquid ophthalmic preparations packed in multiple-dose containers provide information on the duration of use and the necessary warning information to afford adequate protection from contamination during use.

Section 801.1 requires that the label for a device in package form, contain the name and place of business of the manufacturer, packer, or distributor.

Section 801.5 requires that labeling for a device include information on intended use as defined under § 801.4 and provide adequate directions to assure safe use by the lay consumers.

Section 801.61 requires that the principal display panel of an over-the-counter (OTC) device in package form must bear a statement of the identity of the device. The statement of identity of the device must include the common name of the device followed by an accurate statement of the principal intended actions of the device.

Section 801.62 requires that the label for an OTC device in package form must bear a statement of declaration of the net quantity of contents. The label must express the net quantity in terms of weight, measure, numerical count, or a combination of numerical count and weight, measure, or size.

Section 801.109 establishes labeling requirements for prescription devices, in which the label for the device must describe the application or use of the device, and contain a cautionary statement restricting the device for sale by, or on the order of an appropriate professional.

For prescription by a licensed practitioner, § 801.110 establishes labeling requirements for a prescription device delivered to the ultimate purchaser or user. The device must be accompanied by labeling bearing the name and address of the licensed practitioner, directions for use, and cautionary statements if any, provided by the order.

Section 801.150(e) requires a written agreement between firms involved when a nonsterile device is assembled or packaged with labeling that identifies the final finished device as sterile, for which the device is ultimately introduced into interstate commerce to an establishment or contract manufacturer to be sterilized. When a written agreement complies with the requirements under § 801.150(e), FDA takes no regulatory action against the device as being misbranded or adulterated. In addition, § 801.150(e) requires that each pallet, carton, or other designated unit, be conspicuously marked to show its nonsterile nature when introduced into interstate commerce, and while being held prior to sterilization.

Section 801.405(b)(1) provides for labeling requirements for articles, including repair kits, re-liners, pads, and cushions, intended for use in temporary repairs and refitting of dentures for lay persons. Section 801.405(b)(1) also requires that the labeling contain the word ''emergency'' preceding and modifying each indication-for-use statement for denture repair kits and the word ''temporary'' preceding and modifying each indication-for-use statement for re-liners, pads, and cushions.

Section 801.405(c) provides for labeling requirements that contain essentially the same information described under § 801.405(b)(1). The information is intended to enable a lay person to understand the limitations of using OTC denture repair kits, and denture re-liners, pads, and cushions.

Section 801.420(c)(1) requires that manufacturers or distributors of hearing aids develop a user instructional brochure to be provided by the dispenser of the hearing aid to prospective users. The brochure must contain detailed information on the use and maintenance of the hearing aid.

Section 801.420(c)(4) establishes requirements that the user instructional brochure or separate labeling, provide for technical data elements useful for selecting, fitting, and checking the performance of a hearing aid. In addition, § 801.420(c)(4) provides for testing requirements to determine that the required data elements must be conducted in accordance with the American National Standards Institute's (ANSI) ''Specification of Hearing Aid Characteristics,'' ANSI S3.22–1996 (ASA 70–1996); (Revision of ANSI S3.22–1987), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 801.421(b) establishes requirements for the hearing aid dispenser to provide prospective users with a copy of the user instructional brochure along with an opportunity to review comments, either orally or by the predominant method of communication used during the sale.

Section 801.421(c) establishes requirements for the hearing aid dispenser to provide a copy of the user instructional brochure to the prospective purchaser of any hearing aid upon request or, if the brochure is unavailable, provide the name and address of the manufacturer or distributor from which it may be obtained.

Section 801.430(d) establishes labeling requirements for menstrual tampons to provide information on signs, risk factors, and ways to reduce the risk of Toxic Shock Syndrome (TSS).

Section 801.430(e)(2) requires menstrual tampon package labels to provide information on the absorbency term based on testing required under § 801.430(f) and an explanation of selecting absorbencies that reduce the risk of contracting TSS.

Section 801.435(b), (c), and (h) establishes requirements for condom labeling to bear an expiration date that is supported by testing that demonstrates the integrity of three random lots of the product.

Section 809.10(a) and (b) establishes requirements that a label for an in vitro diagnostic (IVD) device and the accompanying labeling (package insert), must contain information identifying its

intended use, instructions for use and lot or control number, and source.

Section 809.10(d)(1) provides that the labeling requirements for general purpose laboratory reagents may be exempt from the requirements of § 809.10(a) and (b), if the labeling contains information identifying its intended use, instructions for use, lot or control number, and source.

Section 809.10(e) provides that the labeling for ''Analytic Specific Reagents'' (ASRs) must provide information identifying the quantity or proportion of each reagent ingredient, instructions for use, lot or control number, and source.

Section 809.10(f) provides that the labeling for OTC test sample collection systems for drugs of abuse must include information on the intended use, specimen collection instructions, identification system, and information about use of the test results. In addition, § 809.10(f) requires that this information be in language appropriate for the intended users.

Section 809.30(d) requires that advertising and promotional materials for ASRs include the identity and purity of the ASR and the identity of the analyte.

Section 1040.20(d) (21 CFR 1040.20) provides that manufacturers of sunlamp products and ultraviolet lamps are subject to the labeling regulations under part 801.

The burden estimates are based on FDA's current registration and listing data and shipment information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Processing, labeling, or repacking agreement—801.150(a)(2)	4,870	739	3,598,930	0.50	1,799,465
Impact resistant lenses; invoices, shipping documents, and records of sale or distribution—801.410(e) and (f)	1,136	924,100	27,723,000	0.0008	22,178
Hearing aid records—801.421(d)	10,000	160	1,600,000	0.25	400,000
Menstrual tampons, sampling plan for measuring absorbency—801.430(f)	22	8	176	80	14,080
Latex condoms; justification for the application of testing data to the variation of the tested product—801.435(g)	63	6	378	1	378
Total					2,236,101

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Contact lens cleaning solution labeling—800.10(a)(3) and 800.12(c)	17	8	136	1	136
Liquid ophthalmic preparation labeling—800.10(b)(2)	17	8	136	1	136
Manufacturer, packer, or distributor information—801.1	13,780	7	96,460	1	96,460
Adequate directions for use—801.5	6,657	6	39,942	22.35	892,704
Statement of identity—801.61	6,657	6	39,942	1	39,942
Declaration of net quantity of contents—801.62	6,657	6	39,942	1	39,942
Prescription device labeling—801.109	7,558	6	45,348	17.77	805,834
Retail exemption for prescription devices—801.110	30,000	667	20,010,000	0.25	5,002,500
Processing, labeling, or repacking; non-sterile devices—801.150(e)	377	34	12,818	4	51,272
Labeling of articles intended for lay use in the repairing and/or refitting of dentures—801.405(b)(1)	31	1	31	4	124
Dentures; information regarding temporary and emergency use—801.405(c)	31	1	31	4	124
Labeling requirements for hearing aids—801.420(c)(1)	86	12	1,032	40	41,280
Technical data for hearing aids—801.420(c)(4)	86	12	1,032	80	82,560
Hearing aids, opportunity to review user instructional brochure—801.421(b)	10,000	160	1,600,000	0.30	480,000
Hearing aids, availability of user instructional brochure—801.421(c)	10,000	5	50,000	0.17	8,500
User labeling for menstrual tampons—801.430(d)	22	8	176	2	352
Menstrual tampons, ranges of absorbency—801.430(e)(2)	22	8	176	2	352
User labeling for latex condoms—801.435(b), (c), and (h)	63	6	378	100	37,800
Labeling for IVDs—809.10(a) and (b)	1,700	6	10,200	80	816,000
Labeling for general purpose laboratory reagents—809.10(d)(1)	300	2	600	40	24,000
Labeling for analyte specific reagents—809.10(e)	300	25	7,500	1	7,500
Labeling for OTC test sample collection systems for drugs of abuse testing—809.10(f)	20	1	20	100	2,000
Advertising and promotional materials for ASRs—809.30(d)	300	25	7,500	1	7,500

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Labeling of sunlamp products—1040.20(d)	30	1	30	10	300
Total					8,437,318

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 29, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18197 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0505]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of existing FDA regulations concerning FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle.

DATES: Submit either electronic or written comments on the collection of information by September 30, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle—21 CFR 189.5 and 700.27 (OMB Control Number 0910–0623)—Revision

FDA's regulations in §§ 189.5 and 700.27 (21 CFR 189.5 and 700.27) set forth bovine spongiform encephalopathy (BSE)-related restrictions applicable to FDA-regulated human food and cosmetics. The regulations designate certain materials from cattle as ''prohibited cattle materials,'' including specified risk materials (SRMs), the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from nonambulatory disabled cattle, and mechanically separated (MS) beef. Sections 189.5(c) and 700.27(c) set forth the requirements for recordkeeping and records access for FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle. The FDA issued these recordkeeping regulations under the adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 601(c), and 701(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 361(c), and 371(a)). Under section 701(a) of the FD&C Act, the FDA is authorized to issue regulations for the FD&C Act's efficient enforcement. With regard to records concerning imported human food and cosmetics, the FDA relied on its authority under sections 701(b) and 801(a) of the FD&C Act (21 U.S.C. 371(b) and 381(a)). Section 801(a) of the FD&C Act provides requirements with regard to imported human food and cosmetics and provides for refusal of admission of human food and cosmetics that appear to be adulterated into the United States. Section 701(b) of the FD&C Act authorizes the Secretaries of Treasury and Health and Human Services to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act.

These requirements are necessary because once materials are separated from an animal it may not be possible, without records, to know the following: (1) Whether cattle material may contain SRMs (SRMs include brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae and the wings of the sacrum), and dorsal root ganglia from animals less than 30 months old and tonsils and distal ileum of the small intestine from all animals of all ages); (2) whether the source animal for cattle material was inspected and passed; (3) whether the source animal for cattle material was nonambulatory disabled or MS beef; and (4) whether tallow in human food or cosmetics contain less than 0.15 percent insoluble impurities.

FDA's regulations in §§ 189.5(c) and 700.27(c) require manufacturers and processors of human food and cosmetics manufactured from, processed with, or otherwise containing material from cattle establish and maintain records sufficient to demonstrate that the human food or cosmetics are not manufactured from, processed with, or otherwise containing prohibited cattle materials. These records must be retained for 2 years at the manufacturing or processing establishment or at a reasonably accessible location. Maintenance of electronic records is acceptable, and electronic records are considered to be reasonably accessible if they are accessible from an onsite location. Records required by these sections and existing records relevant to compliance with these sections must be available to FDA for inspection and copying. Existing records may be used if they contain all of the required information and are retained for the required time period.

Because FDA does not easily have access to records maintained at foreign establishments, FDA regulations in §§ 189.5(c)(6) and 700.27(c)(6), respectively, require that when filing for entry with U.S. Customs and Border Protection, the importer of record of human food or cosmetics manufactured from, processed with, or otherwise containing cattle material must affirm that the human food or cosmetics were manufactured from, processed with, or otherwise containing cattle material and must affirm that the human food or cosmetics were manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. In addition, if human food or cosmetics were manufactured from, processed with, or otherwise containing cattle material, the importer of record must provide within 5 business days records sufficient to demonstrate that the human food or cosmetics were not manufactured from, processed with, or otherwise containing prohibited cattle material, if requested.

Upon review of the information collection requests supporting these BSE-related regulations, FDA found that the burdens associated with the requirements for recordkeeping and records access found in §§ 189.5(c) and 700.27(c) are in use without current OMB approval. This collection of information was previously approved by OMB under control number 0910–0597. FDA submitted a timely information collection request to extend the approval of 0910–0597, but the request was denied. To most appropriately streamline this information collection and to eliminate redundancy in information collection requests, FDA seeks to revise the 0910–0623 collection to include the reporting and recordkeeping elements of 0910–0597. FDA has included these elements in the burden estimates and discussion in this document.

Under FDA's regulations, FDA may designate a country from which cattle materials inspected and passed for human consumption are not considered prohibited cattle materials, and their use does not render human food or cosmetics adulterated. Sections 189.5(e) and 700.27(e) provide that a country seeking to be designated must send a written request to the Director of the Center for Food Safety and Applied Nutrition (CFSAN Director). The information the country is required to submit includes information about a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and other information relevant to determining whether SRMs, the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from nonambulatory disabled cattle, or MS beef from the country seeking designation should be considered prohibited cattle materials. FDA uses the information to determine whether to grant a request for designation and to impose conditions if a request is granted.

Sections 189.5 and 700.27 further state that countries designated under §§ 189.5(e) and 700.27(e) will be subject to future review by FDA to determine whether their designations remain appropriate. As part of this process, FDA may ask designated countries to confirm their BSE situation and the information submitted by them, in support of their original application, has remained unchanged. FDA may revoke a country's designation if FDA determines that it is no longer appropriate. Therefore, designated countries may respond to periodic FDA requests by submitting information to confirm their designations remain appropriate. FDA uses the information to ensure their designations remain appropriate.

Description of Respondents: Respondents to this information collection include manufacturers, processors, and importers of FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle, as well as, with regard to §§ 189.5(e) and 700.27(e), foreign governments seeking designation under those regulations.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
189.5(c)(6) and 700.27(c)(6)	54,825	1	54,825	.033 (2 minutes)	1,809
189.5(e) and 700.27(e); request for designation.	1	1	1	80	80
189.5(e) and 700.27(e); response to request for review by FDA.	1	1	1	26	26
Total					1,915

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR 189.5(c) and 700.27(c)	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
Domestic facilities	697	52	36,244	0.25 (15 minutes)	9,061
Foreign facilities	916	52	47,632	0.25 (15 minutes)	11,908
Total					20,969

[1] There are no capital or operating and maintenance costs associated with this collection of information.

Except where otherwise noted, this estimate is based on FDA's estimate of the number of facilities affected by the final rule entitled, ''Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle,'' published in the **Federal Register** of October 11, 2006 (71 FR 59653).

Reporting

FDA's regulations in §§ 189.5(c)(6) and 700.27(c)(6) impose a reporting burden on importers of human food and cosmetics manufactured from, processed with, or otherwise containing cattle material. Importers of these products must affirm that the human food or cosmetics are not manufactured from, processed with, or otherwise contain prohibited cattle materials and must affirm that the human food or cosmetics were manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. The affirmation is made by the importer of record to the FDA through FDA's Operational and Administrative System for Import Support. Affirmation by importers is expected to take approximately 2 minutes per entry line. Table 2 shows 54,825 lines of human food and cosmetics likely to contain cattle materials are imported annually. The reporting burden of affirming whether import entry lines contain cattle-derived materials is estimated to take 1,809 hours annually (54,825 lines multiplied by 2 minutes per line).

FDA's estimate of the reporting burden for designation under §§ 189.5 and 700.27 is based on its experience and the average number of requests for designation received in the past 3 years. In the last 3 years, FDA has not received any requests for designation. Thus, FDA estimates that one or fewer will be received annually in the future. Based on this experience, FDA estimates the annual number of new requests for designation will be one. FDA estimates that preparing the information required by §§ 189.5 and 700.27 and submitting it to FDA in the form of a written request to the CFSAN Director will require a burden of approximately 80 hours per request. Thus, the burden for new requests for designation is estimated to be 80 hours annually, as shown in Table 1, row 1.

Under §§ 189.5(e) and 700.27(e), designated countries are subject to future review by FDA and may respond to periodic FDA requests by submitting information to confirm their designations remain appropriate. In the last 3 years, FDA has not requested any reviews. Thus, FDA estimates that one or fewer will occur annually in the future. FDA estimates that the designated country undergoing a review in the future will need one-third of the time it took preparing its request for designation to respond to FDA's request for review, or 26 hours (80 hours × 0.33 = 26.4 hours, rounded to 26). The annual burden for reviews is estimated to be 26 hours, as shown in Table 1, row 2. The total reporting burden for this information collection is estimated to be 1,915 hours annually.

Recordkeeping

FDA estimates that there are 697 domestic facility relationships and 916 foreign facility relationships consisting of the following facilities: An input supplier of cattle-derived materials that requires records (the upstream facility) and a purchaser of cattle-derived materials requiring documentation (this may be a human food or cosmetics manufacturer or processor). The recordkeeping burden of FDA's regulations in §§ 189.5(c) and 700.27(c) is the burden of sending, verifying, and storing documents regarding shipments of cattle material that is to be used in human food and cosmetics.

In this estimate of the recordkeeping burden, FDA treats these recordkeeping activities as shared activities between the upstream and downstream facilities. It is in the best interests of both facilities in the relationship to share the burden necessary to comply with the regulations; therefore, FDA estimates the time burden of developing these records as a joint task between the two facilities. Thus, FDA estimates that this recordkeeping burden will be about 15 minutes per week, or 13 hours per year, and FDA assumes that the recordkeeping burden will be shared between 2 entities (i.e., the ingredient supplier and the manufacturer of finished products). Therefore, the total recordkeeping burden for domestic facilities is estimated to be 9,061 hours (13 hours multiplied by 697), and the total recordkeeping burden for foreign facilities is estimated to be 11,908 hours (13 hours multiplied by 916), as shown in Table 1.

Dated: July 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18109 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0007]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2015 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Animal Drug User Fee Amendments of 2013 (ADUFA III), authorizes FDA to collect user fees for certain animal drug applications and supplements, for certain animal drug products, for certain establishments where such products are made, and for certain sponsors of such animal drug applications and/or investigational animal drug submissions. This document establishes the fee rates for FY 2015.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* or contact Lisa Kable,

Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 240–276–9718. For general questions, you may also email the Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the FD&C Act (21 U.S.C. 379j–12) establishes four different types of user fees: (1) Fees for certain types of animal drug applications and supplements; (2) annual fees for certain animal drug products; (3) annual fees for certain establishments where such products are made; and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j–12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FY 2014 through FY 2018, the FD&C Act establishes aggregate yearly base revenue amounts for each fiscal year (21 U.S.C. 379j–12(b)(1)). Base revenue amounts established for years after FY 2014 are subject to adjustment for inflation and workload (21 U.S.C. 379j–12(c)). Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the percentages of the total revenue that is derived from each type of user fee will be as follows: Revenue from application fees shall be 20 percent of total fee revenue; revenue from product fees shall be 27 percent of total fee revenue; revenue from establishment fees shall be 26 percent of total fee revenue; and revenue from sponsor fees shall be 27 percent of total fee revenue (21 U.S.C. 379j–12(b)(2)).

For FY 2015, the animal drug user fee rates are: $400,600 for an animal drug application; $200,300 for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to the criteria set forth in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $8,075 for an annual product fee; $104,150 for an annual establishment fee; and $94,450 for an annual sponsor fee. FDA will issue invoices for FY 2015 product, establishment, and sponsor fees by December 31, 2014, and payment will be due by January 31, 2015. The application fee rates are effective for applications submitted on or after October 1, 2014, and will remain in effect through September 30, 2015. Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed under ADUFA.

II. Revenue Amount for FY 2015

A. Statutory Fee Revenue Amounts

ADUFA III (Title I of Pub. L. 113–14) specifies that the aggregate fee revenue amount for FY 2015 for all animal drug user fee categories is $21,600,000. (21 U.S.C. 379j–12(b)(1)(B).)

B. Inflation Adjustment to Fee Revenue Amount

The fee revenue amount established in ADUFA III for FY 2015 and subsequent years are subject to an inflation adjustment (21 U.S.C. 379j–12(c)(2)).

The component of the inflation adjustment for payroll costs shall be 1 plus the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first three of the four preceding fiscal years, multiplied by the proportion of PC&B costs to total FDA costs for the first three of the preceding four fiscal years (see 21 U.S.C. 379j–12(c)(2)(B)). The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes that actual cost and FTE data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the first three of the four fiscal years preceding FY 2015. The 3-year average is 1.8829 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2011	2012	2013	3-Year average (percent)
Total PC&B	$1,761,655,000	$1,824,703,000	$1,927,703,000	
Total FTE	13,331	13,382	13,974	
PC&B per FTE	$132,147	$136,355	$137,949	
Percent Change from Previous Year	1.2954%	3.1843%	1.169%	1.8829

The statute specifies that this 1.8829 percent should be multiplied by the proportion of PC&B costs to total FDA costs. Table 2 shows the amount of PC&B and the total amount obligated by FDA for the same three fiscal years.

TABLE 2—PERSONNEL COMPENSATION AND BENEFITS (PC&B) AS A PERCENT OF TOTAL COSTS AT FDA

Fiscal year	2011	2012	2013	3-Year average
Total PC&B	$1,761,655,000	$1,824,703,000	$1,927,703,000	
Total Costs	$3,333,407,000	$3,550,496,000	$4,151,343,000	
PC&B Percent	52.8485%	51.3929%	46.4356%	50.2257%

The payroll adjustment is 1.8829 percent multiplied by 50.2257 percent (or .9457 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs for FY 2015 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items less food and energy; annual index) for the first 3 of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total FDA costs (see 21 U.S.C. 379j–12(c)(2)(C)). Table 3 provides the summary data for the percent change in the specified CPI for the Baltimore-Washington area. The data from the Bureau of Labor Statistics is shown in Table 3.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI LESS FOOD AND ENERGY

Year	2011	2012	2013	3-Year average
Annual CPI	140.963	144.413	146.953	
Annual Percent Change	2.2694%	2.4475%	1.7588%	2.1586%

To calculate the inflation adjustment for non-pay costs, we multiply the 2.1586 percent by the proportion of all costs other than PC&B to total FDA costs. Since 50.2257 percent was obligated for PC&B as shown in Table 2, 49.7743 percent is the portion of costs other than PC&B (100% − 50.2257& = 49.7743 percent). The non-payroll adjustment is 2.1586 percent times 49.7743 percent, or 1.0744 percent.

To complete the inflation adjustment, we add the payroll component (0.9457 percent) to the non-pay component (1.0744 percent), for a total inflation adjustment of 2.0201 percent, and then add one, making 1.020201. We then multiply the base revenue amount for FY 2015 ($21,600,000) by 1.020201, yielding an inflation adjusted amount of $22,036,000 (rounded to the nearest thousand dollars).

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

A workload adjustment will be calculated to the inflation adjusted fee revenue amount established in ADUFA III for FY 2015 and subsequent fiscal years (21 U.S.C. 379j–12(c)(3)).

FDA calculated the average number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 5-year period that ended on September 30, 2013 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended June 30, 2014.

The results of these calculations are presented in the first two columns of Table 4. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is added, reflecting a total change in workload of −0.47 percent for FY 2015. This is the workload adjuster for FY 2015.

TABLE 4—WORKLOAD ADJUSTER CALCULATION

[Numbers may not add due to rounding]

Application type	Column 1 5-year avg. (base years)	Column 2 latest 5-year avg.	Column 3 percent change	Column 4 weighting factor	Column 5 weighted percent change
New Animal Drug Applications (NADAs)	9.80	13.2	35	0.0214	0.74
Supplemental NADAs with Safety or Efficacy Data	9.6	11.4	19	0.0349	0.65
Manufacturing Supplements	361.0	349.6	−3	0.1385	−0.44
Investigational Study Submissions	216.4	211.6	−2	0.6334	−1.41
Investigational Protocol Submissions	133.6	133.4	0	0.1718	−0.03
FY 2015 Workload Adjuster					−0.47

ADUFA specifies that the workload adjuster may not result in fees that are less than the fee revenue amount in the statute (21 U.S.C. 379j–12(c)(3)(C)). Because applying the FY 2015 workload adjuster would result in fees less than the statutory amount, the workload adjustment will not be applied in FY 2015. As a result, the statutory revenue target amount for fees in FY 2015 remains at the inflation adjusted fee revenue amount of $22,036,000.

D. FY 2015 Fee Revenue Amounts

ADUFA III specifies that the revenue amount of $22,036,000 for FY 2015 is to be divided as follows: 20 percent, or a total of $4,407,000 (rounded to the nearest thousand dollars), is to come from application fees; 27 percent, or a total of $5,950,000 (rounded to the nearest thousand dollars), is to come from product fees; 26 percent, or a total of $5,729,000 (rounded to the nearest thousand dollars), is to come from establishment fees; and 27 percent, or a total of $5,950,000 (rounded to the nearest thousand dollars), is to come from sponsor fees (21 U.S.C. 379j–12(b)).

III. Application Fee Calculations for FY 2015

The terms ''animal drug application'' and ''supplemental animal drug application'' are defined in section 739 of the FD&C Act (21 U.S.C. 379j–11(1) and (2)).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be set so that they will generate $4,407,000 in fee revenue for FY 2015. This is the amount derived in section II.D. The fee for a supplemental animal drug application, for which safety or effectiveness data are required, and for an animal drug application subject to criteria set forth in section 512(d)(4) of the FD&C Act is to be set at 50 percent of the animal drug application fee (21 U.S.C. 379j–12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $4,407,000 FDA must first make some assumptions about the number of fee-paying applications and supplements the Agency will receive in FY 2015.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. In estimating the fee revenue to be generated by animal drug application fees in FY 2015, FDA is assuming that the number of applications that will pay fees in FY 2015 will equal the average number of submissions over the five most recent completed years (FY 2009–FY 2013). This may not fully account for possible year-to-year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after 10 years of experience with this program.

Over the five most recent completed years, the average number of animal drug applications that would have been subject to the full fee was 6.2. Over this same period, the average number of supplemental applications and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that would have been subject to half of the full fee was 9.6.

B. Fee Rates for FY 2015

FDA must set the fee rates for FY 2015 so that the estimated 6.2 applications that pay the full fee and the estimated 9.6 supplemental applications and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that pay half of the full fee will generate a total of $4,407,000. To generate this amount, the fee for an animal drug application, rounded to the nearest $100, will have to be $400,600, and the fee for a supplemental animal drug application for which safety or effectiveness data are required and for applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act will have to be $200,300.

IV. Product Fee Calculations for FY 2015

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in a new animal drug application or supplemental new animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003. (See 21 U.S.C. 379j–12(a)(2).) The term ''animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an animal drug application or a supplemental animal drug application has been approved (21 U.S.C. 379j–11(3)). The product fees are to be set so that they will generate $5,950,000 in fee revenue for FY 2015. This is the amount derived in section II.D.

To set animal drug product fees to realize $5,950,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2015. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of June 2014, FDA estimates that there are a total of 768 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 768 products will be subject to this fee in FY 2015.

In estimating the fee revenue to be generated by animal drug product fees in FY 2015, FDA is assuming that 4 percent of the products invoiced, or 31, will not pay fees in FY 2015 due to fee waivers and reductions. FDA has reduced the estimate of the percentage of products that will not pay fees from 6 percent to 4 percent this year, based on historical data over the past 5 years. Based on experience with other user fee programs and the first 10 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2015.

Accordingly, the Agency estimates that a total of 737 (768 minus 31) products will be subject to product fees in FY 2015.

B. Product Fee Rates for FY 2015

FDA must set the fee rates for FY 2015 so that the estimated 737 products that pay fees will generate a total of $5,950,000. To generate this amount will require the fee for an animal drug product, rounded to the nearest $5, to be $8,075.

V. Establishment Fee Calculations for FY 2015

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year. (See 21 U.S.C. 379j–12(a)(3).) An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year. (See 21 U.S.C. 379j–12(a)(3).) The term ''animal drug establishment'' is defined in 21 U.S.C. 379j–11(4). The establishment fees are to be set so that they will generate $5,729,000 in fee revenue for FY 2015. This is the amount derived in section II.D.

To set animal drug establishment fees to realize $5,729,000, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2015. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of June 2014, FDA estimates that there are a total of 62 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 62 establishments will be subject to this fee in FY 2015.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2015, FDA is assuming that 12 percent of the establishments invoiced, or 7, will not pay fees in FY 2015 due to fee waivers and reductions. FDA has kept this estimate at 12 percent this year, based on historical data over the past 5 years. Based on experience with the first 10 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in FY 2015.

Accordingly, the Agency estimates that a total of 55 establishments (62 minus 7) will be subject to establishment fees in FY 2015.

B. Establishment Fee Rates for FY 2015

FDA must set the fee rates for FY 2015 so that the estimated 55 establishments that pay fees will generate a total of $5,729,000. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest $50, to be $104,150.

VI. Sponsor Fee Calculations for FY 2015

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003. (See 21 U.S.C. 379j–11(6) and 379j–12(a)(4).) An animal drug sponsor is subject to only one such fee each fiscal year. (See 21 U.S.C. 379j–12(a)(4).) The sponsor fees are to be set so that they will generate $5,950,000 in fee revenue for FY 2015. This is the amount derived in section II.D.

To set animal drug sponsor fees to realize $5,950,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2015. Based on the number of firms that would have met this definition in each of the past 10 years, FDA estimates that a total of 179 sponsors will meet this definition in FY 2015.

Careful review indicates that 33 percent of these sponsors will qualify for minor use/minor species waiver or reduction (21 U.S.C. 379j–12(d)(1)(D)). Based on the Agency's experience to date with sponsor fees, FDA's current best estimate is that an additional 32 percent will qualify for other waivers or reductions, for a total of 65 percent of the sponsors invoiced, or 116, who will not pay fees in FY 2015 due to fee waivers and reductions. FDA has kept this estimate at 65 percent this year, based on historical data over the past 5 years. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in FY 2015.

Accordingly, the Agency estimates that a total of 63 sponsors (179 minus 116) will be subject to and pay sponsor fees in FY 2015.

B. Sponsor Fee Rates for FY 2015

FDA must set the fee rates for FY 2015 so that the estimated 63 sponsors that pay fees will generate a total of $5,950,000. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest $50, to be $94,450.

VII. Fee Schedule for FY 2015

The fee rates for FY 2015 are summarized in Table 5.

TABLE 5—FY 2015 FEE RATES

Animal drug user fee category	Fee rate for FY 2015
Animal Drug Application Fees:	
Animal Drug Application	$400,600
Supplemental Animal Drug Application for which Safety or Effectiveness Data are Required or Animal Drug Application Subject to the Criteria Set Forth in Section 512(d)(4) of the FD&C Act	200,300
Animal Drug Product Fee	8,075
Animal Drug Establishment Fee [1]	104,150
Animal Drug Sponsor Fee [2]	94,450

[1] An animal drug establishment is subject to only one such fee each fiscal year.

[2] An animal drug sponsor is subject to only one such fee each fiscal year.

VIII. Procedures for Paying the FY 2015 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA that is submitted on or after October 1, 2014. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or electronically using *http://www.pay.gov.* (The Pay.gov payment option is available to you after you submit a cover sheet. Click the ''Pay Now'' button.) On your check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters ''AD'', from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 979033) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000.

If payment is made by wire transfer, send payment to: U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, FDA Deposit Account Number: 75060099, U.S. Department of Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution about the fee and add it to your payment to ensure that your fee is fully paid.

If you prefer to send a check by a courier, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (Note: In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the application arrives at FDA's CVM. FDA records the official application receipt date as the later of the following: The date the application was received by FDA's CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Treasury are required to notify FDA within 1 working day, using the PIN described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log on to the ADUFA Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* and, under Tools and Resources, click ''The Animal Drug User Fee Cover Sheet'' and then click ''Create ADUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Drug User Cover Sheet, transmit it to FDA, and print a copy. After logging into your

account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three—Send the payment for your application as described in section VIII.A.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment, and Sponsor Fees

By December 31, 2014, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2015 using this fee schedule. Payment will be due by January 31, 2015. FDA will issue invoices in November 2015 for any products, establishments, and sponsors subject to fees for FY 2015 that qualify for fees after the December 2014 billing.

Dated: July 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0007]

Animal Generic Drug User Fee Rates and Payment Procedures for Fiscal Year 2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for fiscal year (FY) 2015 generic new animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Animal Generic Drug User Fee Amendments of 2013 (AGDUFA II), authorizes FDA to collect user fees for certain abbreviated applications for generic new animal drugs, for certain generic new animal drug products, and for certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. This notice establishes the fee rates for FY 2015.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm,* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 240–276–9718. For general questions, you may also email the Center for Veterinary Medicine (CVM) at *cvmagdufa@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 741 of the FD&C Act (21 U.S.C. 379j–21) establishes three different types of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs; (2) annual fees for certain generic new animal drug products; and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j–21(d)).

For FY 2014 through FY 2018, the FD&C Act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for fiscal years after FY 2014 may be adjusted for workload. Fees for applications, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for workload.

For FY 2015, the generic new animal drug user fee rates are: $189,200 for each abbreviated application for a generic new animal drug other than those subject to the criteria in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $94,600 for each abbreviated application for a generic new animal drug subject to the criteria in section 512(d)(4); $8,500 for each generic new animal drug product; $80,900 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; $60,675 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and $40,450 for each generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2015 product and sponsor fees by December 31, 2014. These fees will be due by January 31, 2015. The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2014, and will remain in effect through September 30, 2015. Applications will not be accepted for review until FDA has received full payment of related application fees and any other fees owed under the Animal Generic Drug User Fee program.

II. Revenue Amount for FY 2015

A. Statutory Fee Revenue Amounts

AGDUFA II, Title II of Public Law 113–14, specifies that the aggregate revenue amount for FY 2015 for abbreviated application fees is $1,736,000 and each of the other two generic new animal drug user fee categories, annual product fees and annual sponsor fees, is $2,604,000 each (see 21 U.S.C. 379j–21(b)).

B. Inflation Adjustment to Fee Revenue Amount

The amounts established in AGDUFA II for each year for FY 2014 through FY 2018 include an inflation adjustment; therefore, no further inflation adjustment is required.

C. Workload Adjustment Fee Revenue Amount

For each FY beginning after FY 2014, AGDUFA provides that statutory fee revenue amounts shall be further adjusted to reflect changes in review workload. (See 21 U.S.C. 379j–21(c)(2).)

FDA calculated the average number of each of the four types of applications and submissions specified in the workload adjustment provision (abbreviated applications for generic new animal drugs, manufacturing supplemental abbreviated applications for generic new animal drugs, investigational generic new animal drug study submissions, and investigational generic new animal drug protocol submissions) received over the 5-year period that ended on September 30, 2013 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended on June 30, 2014.

The results of these calculations are presented in the first two columns in Table 1. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA generic new animal drug review

workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of Table 1, the sum of the values in column 5 is calculated, reflecting a total change in workload of 18.8 percent for FY 2015. This is the workload adjuster for FY 2015.

TABLE 1—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1 5-year average (base years)	Column 2 Latest 5-year average	Column 3 Percent change	Column 4 Weighting factor	Column 5 Weighted percent change
Abbreviated New Animal Drug Applications (ANADAs)	25.0	28.0	12	0.4075	4.89
Manufacturing Supplements ANADAs	128.0	137.2	7	0.2721	1.96
Generic Investigational Study Submissions	23.0	30.8	34	0.2004	6.80
Generic Investigational Protocol Submissions	17.2	24.6	43	0.1199	5.16
FY 2015 AGDUFA Workload Adjuster					18.80

Over the last year FDA has seen more sponsors getting involved in the generic new animal drug approval process including pioneer sponsors. There is also an increased interest in seeking single ingredient and combination Type A medicated article approvals. These factors have contributed to an increase in the number of ANADAs submitted. Additionally, more sponsors are pursuing drug approvals that do not qualify for a waiver of the requirement to conduct an in vivo bioequivalence study. For this reason we are seeing an increase in the number of generic investigational new animal drug study submissions. Generic investigational new animal drug protocol submissions have significantly increased due to FDA encouraging sponsors to submit protocols for concurrence prior to conducting these bioequivalence studies. Also, in AGDUFA II the base years were changed from FY 2004 through FY 2008 to FY 2009 through FY 2013.

As a result, the statutory revenue amount for each category of fees for FY 2015 ($1,736,000 for application fees and $2,604,000 for both product and sponsor fees) must now be increased by 18.8 percent, for a total fee revenue target in FY 2015 of $8,250,000 (rounded to the nearest thousand dollars) for fees from all three categories.

III. Abbreviated Application Fee Calculations for FY 2015

The term ''abbreviated application for a generic new animal drug'' is defined in 21 U.S.C. 379j–21(k)(1).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for abbreviated applications for a generic new animal drug that is subject to fees under AGDUFA and that is submitted on or after July 1, 2008. The application fees are to be set so that they will generate $2,062,000 in fee revenue for FY 2015. This is the amount set out in the statute (21 U.S.C. 379j–21(b)(1)) after applying the workload adjuster.

To set fees for abbreviated applications for generic new animal drugs to realize $2,062,000, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive during FY 2015.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. FDA is making estimates and applying different assumptions for two types of full fee submissions: Original submissions of abbreviated applications for generic new animal drugs and ''reactivated'' submissions of abbreviated applications for generic new animal drugs. Any original submissions of abbreviated applications for generic new animal drugs that were received by FDA before July 1, 2008, were not assessed fees (21 U.S.C. 379j–21(a)(1)(A)). Some of these non-fee-paying submissions were later resubmitted on or after July 1 because the initial submission was not approved by FDA (i.e., FDA marked the submission as incomplete and requested additional non-administrative information) or because the original submission was withdrawn by the sponsor. Abbreviated applications for generic new animal drugs resubmitted on or after July 1, 2008, are subject to user fees. In this notice, FDA refers to these resubmitted applications as ''reactivated'' applications.

Also, under AGDUFA II, an abbreviated application for an animal generic drug subject to the criteria in section 512(d)(4) of the FD&C Act and submitted on or after October 1, 2013, shall be subject to 50 percent of the fee applicable to all other abbreviated applications for a generic new animal drug.

Regarding original submissions of abbreviated applications for generic new animal drugs, FDA is assuming that the number of applications that will pay fees in FY 2015 will equal the average number of submissions over the 5 most recent completed years (2009–2013). This may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after 5 complete years of experience with this program.

The average number of original submissions of abbreviated applications for generic new animal drugs over the 5 most recently completed years is 9.6 applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 2.6 submissions subject to the criteria in section 512(d)(4). Each of the submissions described under section 512(d)(4) of the FD&C Act pays 50 percent of the fee paid by the other applications, and will be counted as one half of a fee. Adding all of the applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 50 percent of the number which are subject to such criteria results in a total of 10.9 anticipated full fees.

Under AGDUFA I, FDA estimated the number of reactivations of abbreviated applications for generic new animal drugs which had been originally submitted prior to July 1, 2008. That number has decreased over the years to the point that FDA no longer expects to receive any reactivations of applications initially submitted prior to July 1, 2008, and will include no provision for them in its fee estimates. Should such a submission be made, of course, it will still be expected to pay the appropriate fee.

Based on the previous assumptions, FDA is estimating that it will receive a total of 10.9 fee-paying generic new

animal drug applications in FY 2015 (9.6 original applications paying a full fee and 2.6 applications paying a half fee).

B. Fee Rates for FY 2015

FDA must set the fee rates for FY 2015 so that the estimated 10.9 abbreviated applications that pay the fee will generate a total of $2,062,000. To generate this amount, the fee for a generic new animal drug application, rounded to the nearest hundred dollars, will have to be $189,200, and for those applications that are subject to the criteria set forth in section 512(d)(4) of the FD&C Act 50 percent of that amount, or $94,600.

IV. Generic New Animal Drug Product Fee Calculations for FY 2015

A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an abbreviated new animal drug application or supplemental abbreviated application for generic new animal drugs for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360), and who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term ''generic new animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate $3,094,000 in fee revenue for FY 2015.

To set generic new animal drug product fees to realize $3,094,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2015. FDA gathered data on all generic new animal drug products that have been submitted for listing under section 510 of the FD&C Act, and matched this to the list of all persons who FDA estimated would have an abbreviated new animal drug application or supplemental abbreviated application pending after September 1, 2008. FDA estimates a total of 383 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 383 products will be subject to this fee in FY 2015.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2015, FDA is assuming that 5 percent of the products invoiced, or 19, may qualify for minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has kept the estimate of the percentage of products that will not pay fees at 5 percent this year, based on historical data over the past 5 years.

Accordingly, the Agency estimates that a total of 364 (383 minus 19) products will be subject to product fees in FY 2015.

B. Product Fee Rates for FY 2015

FDA must set the fee rates for FY 2015 so that the estimated 364 products that pay fees will generate a total of $3,094,000. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest 5 dollars, to be $8,500.

V. Generic New Animal Drug Sponsor Fee Calculations for FY 2015

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The generic new animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an abbreviated application for a generic new animal drug, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3)). A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(C)). Applicants with more than six approved abbreviated applications will pay 100 percent of the sponsor fee; applicants with two to six approved abbreviated applications will pay 75 percent of the sponsor fee; and applicants with one or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(C)). The sponsor fees are to be set so that they will generate $3,094,000 in fee revenue for FY 2015.

To set generic new animal drug sponsor fees to realize $3,094,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2015. FDA now has 5 complete years of experience with collecting these sponsor fees. Based on the number of firms that meet this definition and the average number of firms paying fees at each level over the 5 completed years of AGDUFA (FY 2009 through FY 2013), FDA estimates that in FY 2015, 12 sponsors will pay 100 percent fees, 13 sponsors will pay 75 percent fees, and 37 sponsors will pay 50 percent fees. That totals the equivalent of 40.25 full sponsor fees (12 times 100 percent or 12, plus 13 times 75 percent or 9.75, plus 37 times 50 percent or 18.5).

FDA estimates that about 5 percent of all of these sponsors, or 2, may qualify for a minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has kept the estimate of the percentage of sponsors that will not pay fees at 5 percent this year, based on historical data over the past 5 years.

Accordingly, the Agency estimates that the equivalent of 38.25 full sponsor fees (40.25 − 2) are likely to be paid in FY 2015.

B. Sponsor Fee Rates for FY 2015

FDA must set the fee rates for FY 2015 so that the estimated equivalent of 38.25 full sponsor fees will generate a total of $3,094,000. To generate this amount will require the 100 percent fee for a generic new animal drug sponsor, rounded to the nearest $50, to be $80,900. Accordingly, the fee for those paying 75 percent of the full sponsor fee will be $60,675, and the fee for those paying 50 percent of the full sponsor fee will be $40,450.

VI. Fee Schedule for FY 2015

The fee rates for FY 2015 are summarized in Table 2 of this document.

TABLE 2—FY 2015 FEE RATES

Generic new animal drug user fee category	Fee rate for FY 2015
Abbreviated Application Fee for Generic New Animal Drug except those subject to the criteria in section 512(d)(4)	$189,200

TABLE 2—FY 2015 FEE RATES—Continued

Generic new animal drug user fee category	Fee rate for FY 2015
Abbreviated Application Fee for Generic New Animal Drug subject to the criteria in section 512(d)(4)	94,600
Generic New Animal Drug Product Fee	8,500
100 Percent Generic New Animal Drug Sponsor Fee [1]	80,900
75 Percent Generic New Animal Drug Sponsor Fee [1]	60,675
50 Percent Generic New Animal Drug Sponsor Fee [1]	40,450

[1] An animal drug sponsor is subject to only one fee each fiscal year.

VII. Procedures for Paying FY 2015 Generic New Animal Drug User Fees

A. Abbreviated Application Fees and Payment Instructions

The FY 2015 fee established in the new fee schedule must be paid for an abbreviated new animal drug application subject to fees under AGDUFA that is submitted on or after October 1, 2014. Payment must be made in U.S. currency from a U.S. bank by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or by automatic clearing house using *https://www.pay.gov.* (The Pay.gov payment option is available to you after you submit a cover sheet. Click the ''Pay Now'' button). On your check, bank draft, U.S. or postal money order, please write your application's unique Payment Identification Number, beginning with the letters ''AG'', from the upper right-hand corner of your completed Animal Generic Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Generic Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000.

If payment is made via wire transfer, send payment to U. S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution about the fee and add it to your payment to ensure that your fee is fully paid.

If you prefer to send a check by a courier, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.)

The tax identification number of FDA is 53–0196965. (Note: In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the abbreviated application arrives at FDA's Center for Veterinary Medicine (CVM). FDA records the official abbreviated application receipt date as the later of the following: The date the application was received by CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U. S. Department of the Treasury notifies FDA of payment. U.S. Bank and the United States Treasury are required to notify FDA within 1 working day, using the Payment Identification Number described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the AGDUFA Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm137049.htm* and scroll down the page until you find the link ''Create AGDUFA User Fee Cover Sheet.'' Click on that link and follow the directions. For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Generic Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Generic Drug User Fee Cover Sheet. One cover sheet is needed for each abbreviated animal drug application. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique Payment Identification Number.

Step Three—Send the payment for your application as described in Section VII.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Generic Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product and Sponsor Fees

By December 31, 2014, FDA will issue invoices and payment instructions for product and sponsor fees for FY 2015 using this fee schedule. Fees will be due by January 31, 2015. FDA will issue invoices in November 2015 for any products and sponsors subject to fees for FY 2015 that qualify for fees after the December 2014 billing.

Dated: July 29, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18178 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Biosimilar User Fee Rates for Fiscal Year 2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for biosimilar user fees for fiscal year (FY) 2015. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Biosimilar User Fee Act of 2012 (BsUFA), authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar biological product development, certain applications and supplements for approval of biosimilar biological products, establishments where approved biosimilar biological product products are made, and biosimilar biological products after approval.

BsUFA directs FDA to establish, before the beginning of each fiscal year, the initial and annual biosimilar biological product development (BPD) fees, the reactivation fee, and the biosimilar biological product application, establishment, and product fees. These fees are effective on October 1, 2014, and will remain in effect through September 30, 2015.

FOR FURTHER INFORMATION CONTACT: Rachel Richter, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14216, Silver Spring, MD 20993–0002, 301–796–7111.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744G, 744H, and 744I of the FD&C Act (21 U.S.C. 379j–51, 379j–52, and 379j–53), as added by BsUFA (Title IV of the Food and Drug Administration Safety and Innovation Act, Pub. L. 112–144), establish fees for biosimilar biological products. Under section 744H(a)(1)(A) of the FD&C Act, the initial BPD fee for a product is due when the sponsor submits an investigational new drug (IND) application that FDA determines is intended to support a biosimilar biological product application, or within 5 calendar days after FDA grants the first BPD meeting, whichever occurs first. A sponsor who has paid the initial BPD fee is considered to be participating in FDA's BPD program for that product.

Under section 744H(a)(1)(B) of the FD&C Act, once a sponsor has paid the initial BPD fee for a product, the annual BPD fee is assessed beginning in the next fiscal year. The annual BPD fee is assessed for the product each fiscal year until the sponsor submits a marketing application for the product that is accepted for filing, or discontinues participation in FDA's BPD program.

Under section 744H(a)(1)(D) of the FD&C Act, if a sponsor has discontinued participation in FDA's BPD program and wants to re-engage with FDA on development of the product, the sponsor must pay a reactivation fee to resume participation in the BPD program. The sponsor must pay the reactivation fee by the earlier of the following dates: No later than 5 calendar days after FDA grants the sponsor's request for a BPD meeting for that product; or upon the date of submission of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application. Annual BPD fees will be due beginning for the fiscal year after the year in which the reactivation fee was paid.

BsUFA also establishes fees for certain types of applications and supplements, establishments where approved biosimilar biological products are made, and biosimilar biological products post-approval (section 744H(a)(2), 744H(a)(3) and 744H(a)(4), respectively, of the FD&C Act). When certain conditions are met, FDA may grant small businesses a waiver from the biosimilar biological product application fee (section 744H(c)(1) of the FD&C Act).

Under BsUFA, the initial and annual BPD fee rates for a fiscal year are equal to 10 percent of the fee rate established under the Prescription Drug User Fee Act (PDUFA) for an application requiring clinical data for that fiscal year. The reactivation fee is equal to 20 percent of the fee rate established under PDUFA for an application requiring clinical data for that fiscal year. Finally, the application, establishment, and product fee rates under BsUFA are equal to the application, establishment, and product fee rates under PDUFA, respectively.

II. Fee Amounts for FY 2015

BsUFA directs FDA to establish the biosimilar biological product fee rates in each fiscal year by reference to the user fees established under PDUFA for that fiscal year. For more information about BsUFA, please refer to the FDA Web site at *http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/default.htm.* PDUFA fee calculations for FY 2015 are published elsewhere in this issue of the **Federal Register**. The BsUFA fee calculations for FY 2015 are described in this document.

A. Initial and Annual BPD Fees; Reactivation Fees

Under BsUFA, the initial and annual BPD fees equal 10 percent of the PDUFA fee for an application requiring clinical data, and the reactivation fee equals 20 percent of the PDUFA fee for an application requiring clinical data. The FY 2015 fee for an application requiring clinical data under PDUFA is $2,335,200. Multiplying the PDUFA application fee, $2,335,200, by 0.1 results in FY 2015 initial and annual BPD fees of $233,520. Multiplying the PDUFA application fee, $2,335,200, by 0.2 results in an FY 2015 reactivation fee of $467,040.

B. Application and Supplement Fees

The FY 2015 fee for a biosimilar biological product application requiring clinical data equals the PDUFA fee for an application requiring clinical data, $2,335,200. The FY 2015 fee for a biosimilar biological product application not requiring clinical data equals half this amount, $1,167,600. However, under section 744H(a)(2)(A) of the FD&C Act, if a sponsor that submits a biosimilar biological product application has previously paid an initial BPD fee, annual BPD fee(s), and/or reactivation fee(s) for the product that is the subject of the application, the fee for the application is reduced by the cumulative amount of these previously paid fees. The FY 2015 fee for a biosimilar biological product supplement with clinical data is $1,167,600, which is half the fee for a biosimilar biological product application requiring clinical data.

C. Establishment Fee

The FY 2015 biosimilar biological product establishment fee is equal to the FY 2015 PDUFA establishment fee of $569,200.

D. Product Fee

The FY 2015 biosimilar biological product fee is equal to the FY 2015 PDUFA product fee of $110,370.

III. Fee Schedule for FY 2015

The fee rates for FY 2015 are provided in Table 1.

TABLE 1—FEE SCHEDULE FOR FY 2015

Fee category	Fee rates for FY 2015
Initial BPD	$233,520
Annual BPD	233,520
Reactivation	467,040
Applications [1]:	
Requiring clinical data	2,335,200
Not requiring clinical data	1,167,600
Supplement requiring clinical data	1,167,600
Establishment	569,200
Product	110,370

[1] Under section 744H(a)(2)(A) of the FD&C Act, if a sponsor that submits a biosimilar biological product application has previously paid initial BPD fees, annual BPD fees, and/or reactivation fees for the product that is the subject of the application, the fee for the application is reduced by the cumulative amount of these previously paid fees.

IV. Fee Payment Options and Procedures

A. Initial BPD, Reactivation, Application, and Supplement Fees

The fees established in the new fee schedule are effective October 1, 2014. The initial BPD fee for a product is due when the sponsor submits an IND that FDA determines is intended to support a biosimilar biological product application for the product, or within 5 calendar days after FDA grants the first BPD meeting for the product, whichever occurs first. Sponsors who have discontinued participation in the BPD program must pay the reactivation fee by the earlier of the following dates: No later than 5 calendar days after FDA grants the sponsor's request for a BPD meeting for that product; or upon the date of submission of an IND describing an investigation that FDA determines is intended to support a biosimilar biological product application.

The application or supplement fee for a biosimilar biological product is due upon submission of the application or supplement.

To make a payment of the initial BPD, reactivation, supplement, or application fee, you must complete the Biosimilar User Fee Cover Sheet, available on FDA's Web site (*http://www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/default.htm*) and generate a user fee identification (ID) number. Payment must be made in U.S. currency by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to use Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on FDA's Web site after completing the Biosimilar User Fee Cover Sheet and generating the user fee ID number.

Please include the user fee ID number on your check, bank draft, or postal money order, and make it payable to the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If you prefer to send a check by courier such as Federal Express or United Parcel Service, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. Contact U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD, 20993–0002.

The tax identification number of FDA is 53–0196965.

B. Annual BPD, Establishment, and Product Fees

FDA will issue invoices for annual BPD, biosimilar biological product establishment, and biosimilar biological product fees under the new fee schedule in August 2014. Payment instructions will be included in the invoices. Payment will be due on October 1, 2014. If sponsors join the BPD program after the annual BPD invoices have been issued in August 2014, FDA will issue invoices in November 2014 to firms subject to fees for FY 2015 that qualify for the BPD fee after the August 2014 billing. FDA will issue invoices in November 2015 for any annual products and establishments subject to fees for FY 2015 that qualify for fee assessments after the August 2014 billing.

Dated: July 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0007]

Generic Drug User Fee—Abbreviated New Drug Application, Prior Approval Supplement, Drug Master File, Final Dosage Form Facility, and Active Pharmaceutical Ingredient Facility Fee Rates for Fiscal Year 2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for abbreviated new drug applications (ANDAs), prior approval supplements to an approved ANDA (PASs), drug master files (DMFs), generic drug active pharmaceutical ingredient (API) facilities, and finished dosage form (FDF) facilities user fees related to the Generic Drug User Fee Program for fiscal year (FY) 2015. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Generic Drug User Fee Amendments of 2012 (GDUFA), authorizes FDA to assess and collect user fees for certain applications and supplements for human generic drug products, on applications in the backlog as of October 1, 2012 (only applicable to FY 2013), on FDF and API facilities, and on type II active pharmaceutical ingredient DMFs to be made available for reference. This document establishes the fee rates for FY 2015.

FOR FURTHER INFORMATION CONTACT: Rachel Richter, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE–14216, Silver Spring, MD 20993–0002, 301–796–7111.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act (21 U.S.C. 379j–41 and 379j–42) establish fees associated with human generic drug products. Fees are assessed on: (1) Certain applications in the backlog as of October 1, 2012 (only applicable to FY 2013); (2) certain types of applications and supplements for human generic drug products; (3) certain facilities where APIs and FDFs are produced; and (4) certain DMFs associated with human generic drug products. (See section 744B(a)(1)–(4) of the FD&C Act).

For FY 2015, the generic drug fee rates are: ANDA ($58,730), PAS ($29,370), DMF ($26,720), domestic API facility ($41,926), foreign API facility ($56,926), domestic FDF facility ($247,717), and foreign FDF facility ($262,717). These fees are effective on October 1, 2014, and will remain in effect through September 30, 2015.

II. Fee Revenue Amount for FY 2015

The base revenue amount for FY 2015 is $299 million, as set in the statute prior to the inflation adjustment. GDUFA directs FDA to use the yearly revenue amount as a starting point to set the fee rates for each fee type. For more information about GDUFA, please refer to the FDA Web site (*http://www.fda.gov/gdufa*). The ANDA, PAS, DMF, API facility, and FDF facility fee calculations for FY 2015 are described in this document.

Inflation Adjustment

GDUFA specifies that the $299 million is to be adjusted for inflation increases for FY 2015 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 744B(c)(1) of the FD&C Act).

The component of the inflation adjustment for PC&B costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first three of the four preceding fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of the review of human generic drug activities for the first three of the preceding four fiscal years (see section 744B(c)(1)(A)–(B) of the FD&C Act). The data on total

PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes the actual cost and total FTE for the specified FYs, and provides the percent change from the previous fiscal year and the average percent change over the first three of the four fiscal years preceding FY 2015. The 3-year average is 1.8829 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal year	2011	2012	2013	3-Year average (percent)
Total PC&B	$1,761,655,000	$1,824,703,000	$1,927,703,000	
Total FTE	13,331	13,382	13,974	
PC&B per FTE	$132,147	$136,355	$137,949	
% Change from Previous Year	1.2954%	3.1843%	1.1690%	1.8829

The statute specifies that this 1.8829 percent should be multiplied by the proportion of PC&B expended for the review of human generic drug activities for the first three of the preceding four fiscal years. When FDA set fees in FY 2014, the 3-year average of PC&B costs for the entire Agency was used because information for GDUFA was not available. Now that the first year of GDUFA has been completed, FDA will use the data from FY 2013 to calculate the PC&B and non-PC&B proportions. Table 2 shows the amount of PC&B and the total amount obligated for the review of generic drug activities in FY 2013.

TABLE 2—PC&B AS A PERCENT OF FEE REVENUES SPENT ON THE PROCESS FOR THE REVIEW OF HUMAN GENERIC DRUG APPLICATIONS OVER THE LAST 3 YEARS

Fiscal year	2011	2012	2013	3-Year average (percent)
PC&B	NA	NA	$117,576,760	
Non-PC&B	NA	NA	$149,307,336	
Total Costs	NA	NA	$266,884,096	
PC&B Percent			44.0554%	44.0554%
Non-PC&B Percent			55.9446	55.9446

The payroll adjustment is 1.8829 percent multiplied by 44.0554 percent (or 0.8295 percent).

The statute specifies that the portion of the inflation adjustment for non-PC&B costs for FY 2015 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items; annual index) for the first 3 of the preceding 4 years of available data multiplied by the proportion of all costs of the process for the review of human generic drug activities other than PC&B (see section 744B(c)(1)(C) of the FD&C Act). Table 3 provides the summary data for the percent change in the specified CPI for the Baltimore-Washington area. The data are published by the Bureau of Labor Statistics and can be found on its Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''Washington-Baltimore All Items, November 1996=100–CUURA311SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI

Year	2011	2012	2013	3-Year average (percent)
Annual CPI	146.975	150.212	152.500	
Annual Percent Change	3.3449%	2.2024%	1.5232%	2.3568

To calculate the inflation adjustment for non-pay costs, we multiply the 3-year average percent change in the CPI (2.3568 percent) by the proportion of costs FDA obligated for costs other than PC&B. Since 44.0554 percent was obligated for PC&B as shown in table 2, 55.9446 percent is the portion of costs other than PC&B. The non-pay adjustment is 2.3568 percent times 55.9446 percent, or 1.3185 percent.

To complete the inflation adjustment for FY 2015, we add the PC&B component (0.8295 percent) to the non-PC&B component (1.3185 percent) for a total inflation adjustment of 2.148 percent (rounded) for FY 2015.

GDUFA provides for this inflation adjustment to be compounded after FY 2013 (see section 744B(c)(1) of the FD&C Act). This factor for FY 2015 (2.148 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2014 (2.227 percent), as published in the **Federal Register** of August 2, 2013 (78 FR 46977 at 46979). The result of this multiplication of the inflation factors for the 2 years since FY 2013 (1.02148 times 1.02227 percent) becomes the inflation adjustment for FY 2015. For FY 2015, the inflation adjustment is 4.4228 percent (rounded). We then add one, making 1.044228. Finally, we multiply the FY 2015 base revenue amount ($299 million) by 1.044228, yielding an inflation-adjusted target revenue of $312,224,000 (rounded to the nearest thousand dollars).

III. ANDA and PAS Fees

Under GDUFA, the FY 2015 ANDA and PAS fees are owed by each applicant that submits an ANDA or a PAS, on or after October 1, 2014. These fees are due on the receipt date of the ANDA or PAS. Section 744B(b)(2)(B) specifies that the ANDA and PAS fees will make up 24 percent of the $312,224,000, which is $74,934,000 (rounded to the nearest thousand dollars), and further specifies that the PAS fee is equal to half the ANDA fee.

In order to calculate the ANDA fee, FDA estimated the number of full application equivalents (FAEs) that will be submitted in FY 2015. This is done by assuming ANDAs count as one FAE and PASs (supplements) count as one-half an FAE, since the fee for a PAS is one half of the fee for an ANDA. GDUFA also requires, however, that 75 percent of the fee paid for an ANDA or PAS filing fee be refunded if the ANDA or PAS is refused due to issues other than failure to pay fees (section 744B(a)(3)(D) of the FD&C Act). Therefore, an ANDA or PAS that is considered not to have been received by the Secretary due to reasons other than failure to pay fees counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant paid the supplement fee (one half of the full application fee amount).

Using the methodology that follows, FDA determined that approximately 1,065 ANDAs will incur an ANDA filing fee in FY 2015. This number is based on 1,775 ANDAs from October 1, 2012, to May 31, 2014, divided by 20 months and multiplied by 12 months, equaling an estimated 1,065 ANDAs that will be submitted in FY 2015, or 1,065 FAEs. The estimated number of PASs to be received in FY 2015 is 449. This number is based on the 748 PASs from October 1, 2012, to May 31, 2014, divided by 20 months and multiplied by 12 months, equaling an estimated 449 PASs that will be submitted in FY 2015, equivalent to 225 FAEs (rounded).

Adding the 1,065 FAEs with the 225 FAEs yields a total of 1,290 FAEs. After taking into account estimates of the number of ANDAs and PASs that are likely to be refused due to issues other than failure to pay fees, and the number that are likely to be resubmitted in the same fiscal year, the total number of fee-paying FAEs that will be received in FY 2015 is reduced by 14 FAEs to 1,276.

The FY 2015 application fee is estimated by dividing the number of FAEs that will pay the fee in FY 2015 (1,276) into the fee revenue amount to be derived from application fees in FY 2015 ($74,934,000). The result, rounded to the nearest $10, is a fee of $58,730 per ANDA. The PAS fee is one-half that amount, or $29,370, rounded to the nearest $10.

The statute provides that those ANDAs that include information about the production of active pharmaceutical ingredients other than by reference to a DMF will pay an additional fee that is based on the number of such active pharmaceutical ingredients and the number of facilities proposed to produce those ingredients. (See section 744B(a)(3)(F) of the FD&C Act.) FDA considers that this additional fee is unlikely to be assessed often; therefore, FDA has not included projections concerning the amount of this fee in calculating the fees for ANDAs and PASs.

IV. DMF Fee

Under GDUFA, the DMF fee is owed by each person that owns a type II active pharmaceutical ingredient DMF that is referenced, on or after October 1, 2012, in a generic drug submission by an initial letter of authorization. This is a one-time fee for each individual DMF. This fee is due no later than the date on which the first generic drug submission is submitted that references the associated DMF. Under section 744B(a)(2)(D)(iii) of the FD&C Act, if a DMF has successfully undergone an initial completeness assessment and the fee is paid, the DMF will be placed on a publicly available list documenting DMFs available for reference. Thus, some DMF holders may choose to pay the fee prior to the date that it would otherwise be due in order to have the DMF placed on that list.

In order to calculate the DMF fee, FDA assessed the volume of DMF submissions over time. The statistical forecasting methodology of power regression analysis was selected because this model showed a very good fit to the distribution of DMF submissions over time. Based on data representing the total paid DMFs from October 2012 to May 2014 and projecting a 5-year timeline (October 2014 to October 2018), FDA is estimating 701 fee-paying DMFs for FY 2015.

The FY 2015 DMF fee is determined by dividing the DMF revenue by the estimated number of fee-paying DMFs in FY 2015. Section 744B(b)(2)(A) specifies that the DMF fees will make up 6 percent of the $312,224,000, which is $18,734,000 (rounded up to the nearest thousand dollars). Dividing the DMF revenue amount ($18,734,000) by the estimated fee-paying DMFs (701), and rounding to the nearest $10, yields a DMF fee of $26,720 for FY 2015.

V. Foreign Facility Fee Differential

Under GDUFA, the fee for a facility located outside the United States and its territories and possessions shall be not less than $15,000 and not more than $30,000 higher than the amount of the fee for a facility located in the United States and its territories and possessions, as determined by the Secretary. The basis for this differential is the extra cost incurred by conducting an inspection outside the United States and its territories and possessions. For FY 2015 FDA has determined that the differential for foreign facilities will be $15,000. The differential may be adjusted in future years.

VI. FDF Facility Fee

Under GDUFA, the annual FDF facility fee is owed by each person that owns a facility which is identified, or intended to be identified, in at least one generic drug submission that is pending or approved to produce one or more finished dosage forms of a human generic drug. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(C) of the FD&C Act specifies that the FDF facility fee revenue will make up 56 percent of $312,224,000, which is $174,845,000 (rounded to the nearest thousand dollars).

In order to calculate the FDF fee, FDA has used the data submitted by generic drug facilities through the self-identification process mandated in the GDUFA statute and specified in a Notice of Requirement published in the **Federal Register** of October 2, 2012 (77 FR 60125). The total number of FDF facilities identified through self-identification was 681. Of the total facilities identified as FDF, there were 271 domestic facilities and 410 foreign facilities. The foreign facility fee differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (410) to determine the total fees that will result from the foreign facility differential. As a result of that calculation the foreign fee differential will make up $6,150,000 of the total FDF fee revenue. Subtracting the foreign facility differential fee revenue ($6,150,000) from the total FDF facility target revenue ($174,845,000) results in a remaining fee revenue balance of $168,695,000. To determine the domestic FDF facility fee, we divide the $168,695,000 by the total number of facilities (681) which gives us a

domestic FDF facility fee of $247,717. The foreign FDF facility fee is $15,000 more than the domestic FDF facility fee, or $262,717.

VII. API Facility Fee

Under GDUFA, the annual API facility fee is owed by each person that owns a facility which produces, or which is pending review to produce, one or more active pharmaceutical ingredients identified, or intended to be identified, in at least one generic drug submission that is pending or approved or in a Type II active pharmaceutical ingredient drug master file referenced in such generic drug submission. These fees are due no later than the first business day on or after October 1 of each such year. Section 744B(b)(2)(D) of the FD&C Act specifies that the API facility fee will make up 14 percent of $312,224,000 in fee revenue, which is $43,711,000 (rounded to the nearest thousand dollars).

In order to calculate the API fee, FDA has used the data submitted by generic drug facilities through the self-identification process mandated in the GDUFA statute and specified in a Notice of Requirement published on October 2, 2012. The total number of API facilities identified through self-identification was 795. Of the total facilities identified as API facilities, there were 103 domestic facilities and 692 foreign facilities. The foreign facility differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (692) to determine the total fees that will result from the foreign facility differential. As a result of that calculation the foreign fee differential will make up $10,380,000 of the total API fee revenue. Subtracting the foreign facility differential fee revenue ($10,380,000) from the total API facility target revenue ($43,711,000) results in a remaining balance of $33,331,000. To determine the domestic API facility fee, we divide the $33,331,000 by the total number of facilities (795) which gives us a domestic API facility fee of $41,926. The foreign API facility fee is $15,000 more than the domestic API facility fee, or $56,926.

VIII. Fee Payment Options and Procedures

The new fee rates are effective October 1, 2014. To pay the ANDA, PAS, DMF, API facility, and FDF facility fee, you must complete a Generic Drug User Fee cover sheet, available at *http://www.fda.gov/gdufa,* and generate a user fee identification (ID) number. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to utilize *https://www.pay.gov,* a Web-based payment application, for online electronic payment. The *https://www.pay.gov* feature is available on the FDA Web site after completing the generic drug user fee cover sheet and generating the user fee ID number.

Please include the user fee ID number on your check, bank draft, or postal money order and make payable to the order of the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the wire transfer fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., Silver Spring, MD 20993–0002. The tax identification number of FDA is 53–0196965.

Dated: July 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18108 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0007]

Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2015 fee rates for certain domestic and foreign facility reinspections, failures to comply with a recall order, and importer reinspections that are authorized by the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). These fees are effective on October 1, 2014, and will remain in effect through September 30, 2015.

FOR FURTHER INFORMATION CONTACT: Hunter Herrman, Office of Resource Management, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rm. 2049, Rockville, MD 20857, 240–402–3102, email: *Hunter.Herrman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of FSMA (Pub. L. 111–353) added section 743 to the FD&C Act (21 U.S.C. 379j–31) to provide FDA with the authority to assess and collect fees from, in part: (1) The responsible party for each domestic facility and the U.S. agent for each foreign facility subject to a reinspection, to cover reinspection-related costs; (2) the responsible party for a domestic facility and an importer who does not comply with a recall order, to cover food [1] recall activities associated with such order; and (3) each importer subject to a reinspection to cover reinspection-related costs (sections 743(a)(1)(A), (B), and (D) of the FD&C Act). Section 743 of the FD&C Act directs FDA to establish fees for each of these activities based on an estimate of 100 percent of the costs of each activity for each year (sections 743(b)(2)(A), (B), and (D)), and these fees must be made available solely to pay for the costs of each activity for which the fee was incurred (section 743(b)(3)). These fees are effective on October 1, 2014, and

[1] The term ''food'' for purposes of this document has the same meaning as such term in section 201(f) of the FD&C Act (21 U.S.C. 321(f)).

will remain in effect through September 30, 2015. Section 743(b)(2)(B)(iii) of the FD&C Act directs FDA to develop a proposed set of guidelines in consideration of the burden of fee amounts on small businesses. As a first step in developing these guidelines, FDA invited public comment on the potential impact of the fees authorized by section 743 of the FD&C Act on small businesses (76 FR 45818, August 1, 2011). The comment period for this request ended November 30, 2011. As stated in FDA's September 2011 ''Guidance for Industry: Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act,'' (*http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/FoodDefense/ucm274176.htm*), because FDA recognizes that for small businesses the full cost recovery of FDA reinspection or recall oversight could impose severe economic hardship, FDA intends to consider reducing certain fees for those firms. FDA is currently developing a guidance document to outline the process through which firms may request such a reduction of fees. FDA does not intend to issue invoices for reinspection or recall order fees until this guidance document has been published.

In addition, as stated in the September 2011 Guidance, FDA is in the process of considering various issues associated with the assessment and collection of importer reinspection fees. FDA is currently developing a guidance document that will provide information regarding fees that the Agency may assess and collect from importers to cover reinspection-related costs. The fee rates set forth in this notice will be used to determine any importer reinspection fees assessed in FY 2015.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2015

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2015. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2013

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of a full-time equivalent (FTE) or paid staff year for the relevant activity. This is done by dividing the total funds allocated to the elements of FDA primarily responsible for carrying out the activities for which fees are being collected by the total FTEs allocated to those activities. For the purposes of the reinspection and recall order fees authorized by section 743 of the FD&C Act (the fees that are the subject of this notice), primary responsibility for the activities for which fees will be collected rests with FDA's Office of Regulatory Affairs (ORA). ORA carries out inspections and other field-based activities on behalf of FDA's product centers, including the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM). Thus, as the starting point for estimating the full cost per direct work hour, FDA will use the total funds allocated to ORA for CFSAN and CVM related field activities. The most recent FY with available data was FY 2013. In that year, FDA obligated a total of $642,483,679 for ORA in carrying out the CFSAN and CVM related field activities work, excluding the cost of inspection travel. In that same year, the number of ORA staff primarily conducting the CFSAN and CVM related field activities was 2,967 FTEs or paid staff years. Dividing $642,483,679 by 2,967 FTEs results in an average cost of $216,543 per paid staff year, excluding travel costs.

Not all of the FTEs required to support the activities for which fees will be collected are conducting direct work such as inspecting or reinspecting facilities, examining imports, or monitoring recalls. Data collected over a number of years and used consistently in other FDA user fee programs (e.g., under the Prescription Drug User Fee Act (PDUFA) and the Medical Device User Fee and Modernization Act (MDUFA)) show that every seven FTEs who perform direct FDA work require three indirect and supporting FTEs. These indirect and supporting FTEs function in budget, facility, human resource, information technology, planning, security, administrative support, legislative liaison, legal counsel, program management, and other essential program areas. On average, two of these indirect and supporting FTEs are located in ORA or the FDA center where the direct work is being conducted, and one of them is located in the Office of the Commissioner. To get the fully supported cost of an FTE, FDA needs to multiply the average cost of an FTE by 1.43, to take into account the indirect and supporting functions. The 1.43 factor is derived by dividing the 10 fully supported FTEs by 7 direct FTEs. In FY 2013, the average cost of an FTE was $216,543. Multiplying this amount by 1.43 results in an average fully supported cost of $309,657 per FTE, excluding the cost of inspection travel.

To calculate an hourly rate, FDA must divide the average fully supported cost of $309,657 per FTE by the average number of supported direct FDA work hours. See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR

Total number of hours in a paid staff year	2,080
Less:	
10 paid holidays	80
20 days of annual leave	160
10 days of sick leave	80
10 days of training	80
2 hours of meetings per week	80
Net supported direct FDA work hours available for assignments	1,600

Dividing the average fully supported cost of an FTE in FY 2013 ($309,657) by the total number of supported direct work hours available for assignment (1,600) results in an average fully supported cost of $194 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2013—the last FY for which data are available.

B. Adjusting FY 2013 Costs for Inflation To Estimate FY 2015 Costs

To adjust the hourly rate for FY 2015, FDA must estimate the cost of inflation in each year for FY 2014 and FY 2015. FDA uses the method prescribed for estimating inflationary costs under the PDUFA provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that we have used consistently. FDA previously determined the FY 2014 inflation rate to be 2.20; this rate was published in the FY 2014 PDUFA user fee rates notice in the **Federal Register** of August 2, 2013 (78 FR 46980). Using the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.0813 percent for FY 2015, and FDA intends to use this inflation rate to make inflation adjustments for FY 2015 for several of its user fee programs; the derivation of this rate is published in the **Federal Register** in the FY 2015

notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2014 and 2015, therefore, is 4.325 percent (1 plus 2.20 percent times 1 plus 2.0813 percent).

Increasing the FY 2013 average fully supported cost per supported direct FDA work hour of $194 (excluding inspection travel costs) by 4.325 percent yields an inflationary adjusted estimated cost of $202 per a supported direct work hour in FY 2015, excluding inspection travel costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2015, prior to including domestic or foreign travel costs as applicable for the activity.

In FY 2013, ORA spent a total of $4,687,907 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's CFSAN and CVM field activities programs. The total ORA domestic travel costs spent is then divided by the 11,779 CFSAN and CVM domestic inspections, which averages a total of $398 per inspection. These inspections average 27.91 hours per inspection. Dividing $398 per inspection by 27.91 hours per inspection results in a total and an additional cost of $14 per hour spent for domestic inspection travel costs in FY 2013. To adjust $14 for inflationary increases in FY 2014 and FY 2015, FDA must multiply it by the same inflation factor mentioned previously in this document (1.04325), which results in an estimated cost of $15 dollars per paid hour in addition to $202 for a total of $217 per paid hour ($202 plus $15) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2015 when domestic travel is required.

In FY 2013, ORA spent a total of $2,797,656 on 235 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $11,905 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $11,905 per trip by 120 hours per trip results in a total and an additional cost of $99 per paid hour spent for foreign inspection travel costs in FY 2013. To adjust $99 for inflationary increases in FY 2014 and FY 2015, FDA must multiply it by the same inflation factor mentioned previously in this document (1.04325) which results in an estimated cost of $103 dollars per paid hour in addition to $202 for a total of $305 per paid hour ($202 plus $103) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2015 when foreign travel is required.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2015

Fee category	Fee rates for FY 2015
Hourly rate if domestic travel is required	$217
Hourly rate if foreign travel is required	305

III. Fees for Reinspections of Domestic or Foreign Facilities Under Section 743(a)(1)(A)

A. What will cause this fee to be assessed?

The fee will be assessed for a reinspection conducted under section 704 of the FD&C Act (21 U.S.C. 374) to determine whether corrective actions have been implemented and are effective and compliance has been achieved to the Secretary of Health and Human Services' (the Secretary) (and, by delegation, FDA's) satisfaction at a facility that manufactures, processes, packs or holds food for consumption necessitated as a result of a previous inspection (also conducted under section 704) of this facility, which had a final classification of Official Action Indicated (OAI) conducted by or on behalf of FDA, when FDA determined the non-compliance was materially related to food safety requirements of the FD&C Act. FDA considers such non-compliance to include non-compliance with a statutory or regulatory requirement under section 402 of the FD&C Act (21 U.S.C. 342) and section 403(w) of the FD&C Act (21 U.S.C. 343(w)). However, FDA does not consider non-compliance that is materially related to a food safety requirement to include circumstances where the non-compliance is of a technical nature and not food safety related (e.g., failure to comply with a food standard or incorrect font size on a food label). Determining when non-compliance, other than under sections 402 and 403(w) of the FD&C Act, is materially related to a food safety requirement of the FD&C Act may depend on the facts of a particular situation. FDA intends to issue guidance to provide additional information about the circumstances under which FDA would consider non-compliance to be materially related to a food safety requirement of the FD&C Act.

Under section 743(a)(1)(A) of the FD&C Act, FDA is directed to assess and collect fees from ''the responsible party for each domestic facility (as defined in section 415(b) (21 U.S.C. 350d)) and the United States agent for each foreign facility subject to a reinspection'' to cover reinspection-related costs.

Section 743(a)(2)(A)(i) of the FD&C Act defines the term ''reinspection'' with respect to domestic facilities as, ''1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified non-compliance materially related to a food safety requirement of th[e] Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.''

The FD&C Act does not contain a definition of ''reinspection'' specific to foreign facilities. In order to give meaning to the language in section 743(a)(1)(A) of the FD&C Act to collect fees from the U.S. agent of a foreign facility subject to a reinspection, the Agency is using the following definition of ''reinspection'' for purposes of assessing and collecting fees under section 743(a)(1)(A), with respect to a foreign facility, ''1 or more inspections conducted by officers or employees duly designated by the Secretary subsequent to such an inspection which identified non-compliance materially related to a food safety requirement of the FD&C Act, specifically to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction.''

This definition allows FDA to fulfill the mandate to assess and collect fees from the U.S. agent of a foreign facility in the event that an inspection reveals non-compliance materially related to a food safety requirement of the FD&C Act, causing one or more subsequent inspections to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction. By requiring the initial inspection to be conducted by officers or employees duly designated by the Secretary, the definition ensures that a foreign facility would be subject to fees only in the event that FDA, or an entity designated to act on its behalf, has made the requisite identification at an initial inspection of non-compliance materially related to a food safety requirement of the FD&C Act. The definition of ''reinspection-related costs'' in section 743(a)(2)(B) of the FD&C Act relates to both a domestic facility reinspection and a foreign facility reinspection, as described in section 743(a)(1)(A).

B. Who will be responsible for paying this fee?

The FD&C Act states that this fee is to be paid by the responsible party for each domestic facility (as defined in section 415(b) of the FD&C Act) and by the U.S.

agent for each foreign facility (section 743(a)(1)(A) of the FD&C Act). This is the party to whom FDA will send the invoice for any fees that are assessed under this section.

C. How much will this fee be?

The fee is based on the number of direct hours spent on such reinspections, including time spent conducting the physical surveillance and/or compliance reinspection at the facility, or whatever components of such an inspection are deemed necessary, making preparations and arrangements for the reinspection, traveling to and from the facility, preparing any reports, analyzing any samples or examining any labels if required, and performing other activities as part of the OAI reinspection until the facility is again determined to be in compliance. The direct hours spent on each such reinspection will be billed at the appropriate hourly rate shown in table 2 of this document.

IV. Fees for Non-Compliance With a Recall Order Under Section 743(a)(1)(B)

A. What will cause this fee to be assessed?

The fee will be assessed for not complying with a recall order under section 423(d) (21 U.S.C. 350l(d)) or section 412(f) of the FD&C Act (21 U.S.C. 350a(f)) to cover food recall activities associated with such order performed by the Secretary (and by delegation, FDA) (section 743(a)(1)(B) of the FD&C Act). Non-compliance may include the following: (1) Not initiating a recall as ordered by FDA; (2) not conducting the recall in the manner specified by FDA in the recall order; or (3) not providing FDA with requested information regarding the recall, as ordered by FDA.

B. Who will be responsible for paying this fee?

Section 743(a)(1)(B) of the FD&C Act states that the fee is to be paid by the responsible party for a domestic facility (as defined in section 415(b) of the FD&C Act) and an importer who does not comply with a recall order under section 423 or under section 412(f) of the FD&C Act. In other words, the party paying the fee would be the party that received the recall order.

C. How much will this fee be?

The fee is based on the number of direct hours spent on taking action in response to the firm's failure to comply with a recall order. Types of activities could include conducting recall audit checks, reviewing periodic status reports, analyzing the status reports and the results of the audit checks, conducting inspections, traveling to and from locations, and monitoring product disposition. The direct hours spent on each such recall will be billed at the appropriate hourly rate shown in table 2 of this document.

V. How must the fees be paid?

An invoice will be sent to the responsible party for paying the fee after FDA completes the work on which the invoice is based. Payment must be made within 90 days of the invoice date in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Detailed payment information will be included with the invoice when it is issued.

VI. What are the consequences of not paying these fees?

Under section 743(e)(2) of the FD&C Act, any fee that is not paid within 30 days after it is due shall be treated as a claim of the U.S. Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

Dated: July 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18172 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0634]

Draft Guidance for Industry on Cell-Based Products for Animal Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry #218 entitled ''Cell-Based Products for Animal Use.'' This draft guidance describes FDA's Center for Veterinary Medicine's (CVM) current thinking on cell-based products for animal use that meet the definition of a new animal drug. This draft guidance is for firms and individuals developing cell-based products, including animal stem cell-based products (ASCPs).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 30, 2014.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lynne Boxer, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0611, *lynne.boxer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #218 entitled ''Cell-Based Products for Animal Use.'' CVM is aware that many veterinary therapies may be produced using cell-based products. Developers of such products for veterinary use have approached CVM for clarification regarding the regulation of these products. This draft guidance for industry describes CVM's current thinking on cell-based products for animal use that meet the definition of a new animal drug.

Cell-based products meeting the definition of a new animal drug are subject to the same statutory and regulatory requirements as other new animal drugs. Although this draft guidance relates to other cell-based products, this draft guidance focuses on ASCPs meeting the definition of a new animal drug.

This draft guidance addresses the following topics:

- How existing regulations apply to cell-based products for veterinary use;
- A common vocabulary for ASCPs;
- A risk-based category structure for ASCPs; and
- Industry interaction with CVM early in product development.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR

10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 and 21 CFR 511.1 have been approved under OMB control numbers 0910–0032 and 0910–0117 respectively.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: July 28, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18134 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0967]

Intent To Exempt Certain Class II and Class I Reserved Medical Devices From Premarket Notification Requirements; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Intent to Exempt Certain Class II and Class I Reserved Medical Devices from Premarket Notification Requirements.'' This draft guidance describes FDA's intent to exempt certain Class II medical devices and certain Class I medical devices, subject to the reserved criteria, from premarket notification requirements. FDA believes devices identified in this guidance document are sufficiently well understood and do not present risks that require premarket notification review to assure their safety and effectiveness. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 30, 2014.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Intent to Exempt Certain Class II and Class I Reserved Medical Devices from Premarket Notification Requirements'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Abiy Desta, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1682, Silver Spring, MD 20993–0002, 301–796–0293.

SUPPLEMENTARY INFORMATION:

I. Background

In the commitment letter (section 1.G of the Performance Goals and Procedures) that was drafted as part of the reauthorization process for the Medical Device User Fee Amendments of 2012 (Pub. L. 112–144), FDA committed to identifying low-risk medical devices to exempt from premarket notification. This draft guidance describes FDA's intent to exempt certain Class II medical devices and certain Class I medical devices that are subject to the reserved criteria of section 510(*l*) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(*l*)) from premarket submission requirements. FDA believes devices identified in this guidance document are sufficiently well understood and do not present risks that require 510(k) review.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on identifying low risk medical devices to exempt from premarket notification. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Intent to Exempt Certain Class II and Class I Reserved Medical Devices from Premarket Notification Requirements,'' you may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1300046 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995

(44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: July 29, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18198 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Outsourcing Facility Fee Rates for Fiscal Year 2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the rates for fiscal year (FY) 2015 for the establishment and reinspection fees related to human drug compounding outsourcing facilities (outsourcing facilities) that elect to register under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The FD&C Act authorizes FDA to assess and collect an annual establishment fee from outsourcing facilities that have elected to register, as well as a reinspection fee for each reinspection of an outsourcing facility. This document establishes the FY 2015 rates for the small business establishment fee ($5,103), the non-small business establishment fee ($16,442) and the reinspection fee ($15,308) for outsourcing facilities, provides information on how the fees for FY 2015 were determined, and describes the payment procedures outsourcing facilities should follow.

FOR FURTHER INFORMATION CONTACT:

For information on pharmacy compounding and pharmacy compounding user fees: Visit FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm*.

For questions relating to this notice: Rachel Richter, Office of Financial Management Food and Drug Administration, 8455 Colesville Rd., COLE–14216, Silver Spring, MD 20933–0002, 301–796–7111.

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 2013, President Obama signed the Drug Quality and Security Act (DQSA), legislation that contains important provisions relating to the oversight of compounding of human drugs. Title I of this law, the Compounding Quality Act, creates a new section 503B in the FD&C Act (21 U.S.C. 353b). Under section 503B, a human drug compounder can become an ''outsourcing facility.''

Outsourcing facilities, as defined in section 503B(d)(4) of the FD&C Act, are facilities that meet all of the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If these conditions are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from two sections of the FD&C Act: (1) Section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use) and (2) section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)). Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice for drugs).

Section 744K of the FD&C Act (21 U.S.C. 379j–62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities that elect to register under section 503B of the FD&C Act: (1) An annual establishment fee from each outsourcing facility; and (2) a reinspection fee from each outsourcing facility subject to a reinspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a qualified applicant may pay a reduced small business establishment fee (see section 744K(c)(4) of the FD&C Act).

On April 1, 2014, FDA announced in the **Federal Register** of April 1, 2014 (79 FR 18297) the availability of a draft guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' The draft guidance provides additional information on the annual fees for registered outsourcing facilities and adjustments required by law, reinspection fees, how to submit payment, the effect of failure to pay fees and how to qualify as a small business to obtain a reduction of the annual establishment fee. This draft guidance can be accessed on FDA's Web site at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM391102.pdf*.

II. Fees for FY 2015 [1]

A. FY 2015 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Reinspection Fee

1. Establishment Fee for Qualified Small Businesses [2]

The amount of the establishment fee for a qualified small business fee is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by three (see section 744K(c)(4)(A) and (c)(1)(A)). The inflation adjustment factor for FY 2015 is 1.020558. See section II.B.1, below, for the methodology used to calculate the FY 2015 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2015 is one third of $15,308, which equals $5,103 (rounded to the nearest dollar).

2. Establishment Fee for Non-Small Businesses

Under section 744K(c)(1)(A) of the FD&C Act, the amount of the establishment fee for a non-small business fee is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year. The inflation adjustment factor for FY 2015 is 1.020558. (See section II.B.1). The small business adjustment amount for FY 2015 is $1,134. See section II.B.2, for the methodology used

[1] FY 2015 runs from October 1, 2014 through September 30, 2015.

[2] To qualify for a small business reduction of the FY 2015 establishment fee, entities had to submit their exception requests by April 30, 2014. See section 744K(c)(4)(B) of the FD&C Act. Although the time for requesting a small business exception for FY 2015 has now passed, an entity that wishes to request a small business exception for FY 2016 should consult section 744K(c)(4) of the FD&C Act and section III.D of FDA's draft guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act,'' which can be accessed on FDA's Web site at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM391102.pdf*.

to calculate the small business adjustment factor for FY 2015. Therefore, the establishment fee for a non-small business for FY 2015 is $15,000 multiplied by 1.020558, plus $1,134, which equals $16,442.

3. Reinspection Fee

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2015 reinspection fee is equal to $15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2015 is 1.020558. See section II.B.1. Therefore, the reinspection fee for FY 2015 is $15,000 multiplied by 1.020558, which equals $15,308. There is no reduction in this fee for small businesses.

B. Methodology for Calculating FY 2015 Adjustment Factors

1. Inflation Adjustment Factor

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: One based on FDA's payroll costs and one based on FDA's non-pay costs for the first 3 years of the 4 previous FYs. The payroll component of the annual inflation adjustment is calculated by taking the average change in the FDA's per-full time equivalent (FTE) personnel compensation and benefits (PC&B) in the first 3 years of the 4 previous FYs (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per FY to determine the average PC&B per FTE. The data on total PC&B paid and numbers of FTEs paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes the actual cost and FTE data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2015. The 3-year average is 1.8829 percent.

TABLE 1—FDA PC&B'S EACH YEAR AND PERCENT CHANGE

Fiscal year	2011	20112	2013	3-Year average
Total PC&B	$1,761,655,000	$1,824,703,000	$1,927,703,000	.....
Total FTE	13,331	13,382	13,974	.....
PC&B per FTE	$132,147	$136,355	$137,949	.....
Percent change from previous year	1.2954%	3.1843%	1.1690%	1.8829%

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 1.8829 percent should be multiplied by the proportion of PC&B to total costs of an average FTE of FDA for the same 3 FYs.

TABLE 2—FDA PC&B'S AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

Fiscal year	2011	20112	2013	3-Year average
Total PC&B	$1,761,655,000	$1,824,703,000	$1,927,703,000	.....
Total Costs	$3,333,407,000	$3,550,496,000	$4,151,343,000	.....
PC&B Percent	52.8485%	51.3929%	46.4356%	50.2257%

The payroll adjustment is 1.8829 percent multiplied by 50.2257 percent, or 0.9457 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2015 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all costs other than PC&B costs to total costs of an average FTE of the FDA for the first 3 years of the preceding 4 fiscal years.

Table 2 provides the summary data for the percent change in the specified CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''U.S. All items, 1982–84 = 100 – CUUR0000SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

Year	2011	2012	2013	3-Year average
Annual CPI	224.939	229.594	232.957	.....
Annual percent change	3.1565%	2.0694%	1.4648%	2.2302%

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 2.2302 percent should be multiplied by the proportion of all costs other than PC&B costs to total costs of an average FTE of the FDA for the same 3 FYs. The proportion of all costs other than PC&B costs to total costs of an average FTE of FDA for FYs 2011–2013 is 49.7743 percent (100 percent minus 50.2257 percent equals 49.7743 percent). Therefore, the non-pay adjustment is 2.2302 percent times 49.7743 percent, or 1.1101 percent.

To complete the inflation adjustment, the payroll component (0.9457 percent) is added to the non-pay component (1.1101 percent), for a total inflation adjustment of 2.0558 percent (rounded), and then one is added, making 1.020558.

2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation

adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the total fees that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2015, FDA must estimate: (1) The number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2015; and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (i.e., if each outsourcing facility that registers for FY 2015 were to pay the inflation-adjusted fee amount of $15,308). With respect to (1), FDA estimates that 5 entities will qualify for small business exceptions for FY 2015. Accordingly, FDA estimates that 5 entities will pay the reduced fee for small businesses for FY 2015. With respect to (2), to estimate the total number of outsourcing facilities that will register for FY 2015, FDA used data submitted to date by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 50 outsourcing facilities, including 5 small businesses, will register with the Agency in FY 2015.

If the projected 50 outsourcing facilities paid the full inflation-adjusted fee of $15,308, this would result in total revenue of $765,400 in FY 2015 ($15,308 times 50). However, because 5 of the outsourcing facilities expected to register for FY 2015 are estimated to qualify for the small business exception and will pay one-third of the full fee ($5,103 × 5), totaling $25,515 instead of paying the full fee ($15,308 × 5), which totals $76,540, this would leave a shortfall of $51,025 ($76,540 − $25,515). Dividing $51,025 by 45 (the number of estimated non-small businesses) yields $1,134 (rounded to the nearest dollar). Therefore, the FY 2015 small business adjustment to the establishment fee for non-small businesses is $1,134.

C. Summary of FY 2015 Fee Rates

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee	$5,103
Non-Small Business Establishment Fee	16,442
Reinspection Fee	15,308

III. Fee Payment Options and Procedures

A. Establishment Fee

Once an entity submits registration information and FDA has reviewed the information and determined that it is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity via email, to the email address indicated in the registration file, or via regular mail if email is not an option. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be deemed registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as registered outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within fifteen calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2014 and wish to maintain their status as an outsourcing facility in FY 2015 must register during the annual registration period that lasts from October 1, 2014 to December 31, 2014. Failure to register and complete payment by December 31, 2014, will result in a loss of status as an outsourcing facility on January 1, 2015. Entities should submit their registration information no later than December 10, 2014 to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

B. Reinspection Fee

FDA will issue invoices for each reinspection via email, to the email address indicated in the registration file, or via regular mail if email is not an option.

C. Fee Payment Procedures

Entities may remit payments via check or wire transfer.

1. If paying with a paper check: Checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO 63195–6733. If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only; do not send mail to this address.)

2. If paying with a wire transfer: Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Road, Silver Spring, MD 20993. The originating financial institution may charge a wire transfer fee. An outsourcing facility should ask its financial institution about the fee and add it to the payment to ensure that the order is fully paid. The tax identification number of FDA is 53–0196965.

Dated: July 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0007]

Prescription Drug User Fee Rates for Fiscal Year 2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2015. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Prescription Drug User Fee Amendments of 2012 (PDUFA V), authorizes FDA to collect user fees for certain applications for the review of human drug and biological products, on establishments where the products are made, and on such products. This notice establishes the fee rates for FY 2015.

FOR FURTHER INFORMATION CONTACT: Robert J. Marcarelli, Office of Financial Management, Food and Drug

Administration, 8455 Colesville Rd., COLE–14202F, Silver Spring, MD 20993–0002, 301–796–7223.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the FD&C Act (21 U.S.C. 379g and 379h, respectively), establish three different kinds of user fees. Fees are assessed on the following: (1) Certain types of applications and supplements for the review of human drug and biological products; (2) certain establishments where such products are made; and (3) certain products (section 736(a) of the FD&C Act). When certain conditions are met, FDA may waive or reduce fees (section 736(d) of the FD&C Act).

For FY 2013 through FY 2017, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA V. The base revenue amount for FY 2013, which became the base amount for the remaining 4 FYs of PDUFA V, is $718,669,000, as published in the **Federal Register** of August 1, 2012 (77 FR 45639). The FY 2013 base revenue amount is further adjusted each year after FY 2013 for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will provide one-third of the total revenue to be collected each year.

This document provides fee rates for FY 2015 for an application requiring clinical data ($2,335,200), for an application not requiring clinical data or a supplement requiring clinical data ($1,167,600), for an establishment ($569,200), and for a product ($110,370). These fees are effective on October 1, 2014, and will remain in effect through September 30, 2015. For applications and supplements that are submitted on or after October 1, 2014, the new fee schedule must be used. Invoices for establishment and product fees for FY 2015 will be issued in August 2014 using the new fee schedule.

II. Fee Revenue Amount for FY 2015

The base revenue amount for FY 2015 is $718,669,000 prior to adjustments for inflation and workload (see section 736(c)(1) and (c)(2) of the FD&C Act).

A. FY 2015 Statutory Fee Revenue Adjustments for Inflation

PDUFA V specifies that the $718,669,000 is to be further adjusted for inflation increases for FY 2015 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 736(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be 1 plus the average annual percent change in the cost of all PC&B paid per full-time equivalent (FTE) position at FDA for the first 3 of the preceding 4 FYs, multiplied by the proportion of PC&B costs to total FDA costs of process for the review of human drug applications for the first 3 of the preceding 4 FYs (see section 736(c)(1)(A) and (c)(1)(B) of the FD&C Act). The total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes that actual cost and FTE data for the specified FYs, and provides the percent changes from the previous FYs and the average percent changes over the first 3 of the 4 FYs preceding FY 2015. The 3-year average is 1.8829 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGES

Fiscal year	2011	2012	2013	3-Year average
Total PC&B	$1,761,655,000	$1,824,703,000	$1,927,703,000	.....
Total FTE	13,331	13,382	13,974	.....
PC&B per FTE	$132,147	$136,355	$137,949	.....
Percent Change from Previous Year	1.2954%	3.1843%	1.1690%	1.8829%

The statute specifies that this 1.8829 percent should be multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of human drug applications. Table 2 shows the PC&B and the total obligations for the process for the review of human drug applications for 3 FYs.

TABLE 2—PC&B AS A PERCENT OF FEE REVENUES SPENT ON THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

Fiscal year	2011	2012	2013	3-Year average
Total PC&B	$596,627,595	$ 592,642,252	$568,206,210	.....
Total Costs	$1,025,621,707	$1,032,419,218	$966,169,007	.....
PC&B Percent	58.1723%	57.4033%	58.8102%	58.1286%

The payroll adjustment is 1.8829 percent from table 1 multiplied by 58.1286 percent (or 1.0945 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items; annual index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of the process for the review of human drug applications for the first 3 years of the preceding 4 fiscal years (see section 736(c)(1)(C) of the FD&C Act). Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Baltimore area. The data is published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked ''Washington-Baltimore All Items, November 1996=100–CUURA311SA0'' and then clicking on the ''Retrieve Data'' button.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-BALTIMORE AREA

Year	2011	2012	2013	3-Year average
Annual CPI	146.975	150.212	152.500	.....
Annual Percent Change	3.3449%	2.2024%	1.5232%	2.3568%

To calculate the inflation adjustment for non-payroll costs, we multiply the 2.3568 percent by the proportion of all costs other than PC&B to total costs of the process for the review of human drug applications obligated. Since 58.1286 percent was obligated for PC&B as shown in table 2, 41.8714 percent is the portion of costs other than PC&B (100 percent minus 58.1286 percent equals 41.8714 percent). The non-payroll adjustment is 2.3568 percent times 41.8714 percent, or 0.9868 percent.

Next, we add the payroll adjustment (1.0945 percent) to the non-payroll adjustment (0.9868 percent), for a total inflation adjustment of 2.0813 percent (rounded) for FY 2015.

PDUFA V provides for this inflation adjustment to be compounded after FY 2013 (see section 736(c)(1) of the FD&C Act). This factor for FY 2015 (2.0813 percent) is compounded by adding 1 and then multiplying by 1 plus the inflation adjustment factor for FY 2014 (2.20 percent), as published in the **Federal Register** of August 2, 2013 (78 FR 46980 at 46982), which equals to 1.043271 (rounded) (1.020813 times 1.0220) for FY 2015. We then multiply the base revenue amount for FY 2015 ($718,669,000) by 1.043271, yielding an inflation-adjusted amount of $749,766,526.

B. FY 2015 Statutory Fee Revenue Adjustments for Workload

The statute specifies that after the $718,669,000 has been adjusted for inflation, the inflation-adjusted amount shall be further adjusted for workload (see section 736(c)(2) of the FD&C Act).

To calculate the FY 2015 workload adjustment, FDA calculated the average number of each of the four types of applications specified in the workload adjustment provision: (1) Human drug applications; (2) active commercial investigational new drug applications (INDs) (applications that have at least one submission during the previous 12 months); (3) efficacy supplements; and (4) manufacturing supplements received over the 3-year period that ended on June 30, 2012 (base years), and the average number of each of these types of applications over the most recent 3 year period that ended June 30, 2014.

The calculations are summarized in table 4. The 3-year averages for each application category are provided in column 1 (''3-Year Average Base Years 2010–2012'') and column 2 (''3-Year Average 2012–2014''). Column 3 reflects the percent change in workload from column 1 to column 2. Column 4 shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 3 years. Column 5 is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. The sum of the values in column 5 is added, reflecting an increase in workload of 7.49 percent (rounded) for FY 2015 when compared to the base years.

TABLE 4—WORKLOAD ADJUSTER CALCULATION FOR FY 2015

Application type	3-Year average base years 2010–2012 Column 1	3-Year average 2012–2014 Column 2	Percent change (column 1 to column 2) Column 3	Weighting factor (percent) Column 4	Weighted percent change Column 5
New Drug Applications/Biologics License Applications	124.3	141.3	13.6766	37.3	5.10
Active Commercial INDs	6830.0	7141.3	4.5578	41.4	1.89
Efficacy Supplements	136.3	156.7	14.9670	7.5	1.12
Manufacturing Supplements	2548.3	2433.7	−4.4971	13.8	−0.62
FY 2015 Workload Adjuster	.....	.....	.....	.....	7.49

Table 5 shows the calculation of the revenue amount for FY 2015. The $718,669,000 subject to adjustment on the first line is multiplied by the inflation adjustment factor of 1.043271, resulting in the inflation-adjusted amount on the third line, $749,766,526. That amount is then multiplied by one plus the workload adjustment of 7.49 percent, resulting in the inflation and workload adjusted amount of $805,924,000 on the fifth line, rounded to the nearest thousand dollars.

TABLE 5—PDUFA REVENUE AMOUNT FOR FY 2015, SUMMARY CALCULATION

FY 2013 Revenue Amount and Base Subsequent FYs as published in the **Federal Register** of August 1, 2012 (77 FR 45639) (Rounded to nearest thousand dollars).	$718,669,000	Line 1.
Inflation Adjustment Factor for FY 2015 (1 plus 4.3271 percent)	1.043271	Line 2.
Inflation Adjusted Amount	$749,766,526	Line 3.
Workload Adjustment Factor for FY 2015 (1 plus 7.49 percent)	1.0749	Line 4.
Inflation and Workload Adjusted Amount (Rounded to nearest thousand dollars)	$805,924,000	Line 5.

PDUFA specifies that one-third of the total fee revenue is to be derived from application fees, one-third from establishment fees, and one-third from product fees (see section 736(b)(2) of the FD&C Act). Accordingly, one-third of the total revenue amount ($805,924,000), or a total of $268,641,333, is the amount of fee revenue that will be derived from each of these fee categories: Application Fees, Establishment Fees, and Product Fees.

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate one-third of the total fee revenue amount, or $268,641,333 in FY 2015.

B. Estimate of the Number of Fee-Paying Applications and Setting the Application Fees

For FY 2013 through FY 2017, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next FY by averaging the number of fee-paying FAEs received in the 3 most recently completed FYs.

In estimating the number of fee-paying FAEs, a full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount.

As table 6 shows, the average number of fee-paying FAEs received annually in the most recent 3-year period is 115.042 FAEs. FDA will set fees for FY 2015 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 6—FEE-PAYING FAE 3-YEAR AVERAGE

FY	2011	2012	2013	3-Year average
Fee-Paying FAEs	108.250	122.375	114.500	115.042

The FY 2015 application fee is estimated by dividing the average number of full applications that paid fees over the latest 3 years, 115.042, into the fee revenue amount to be derived from application fees in FY 2015, $268,641,333. The result, rounded to the nearest hundred dollars, is a fee of $2,335,200 per full application requiring clinical data, and $1,167,600 per application not requiring clinical data or per supplement requiring clinical data.

IV. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2014, the establishment fee was based on an estimate that 455 establishments would be subject to and would pay fees. By the end of FY 2014, FDA estimates that 509 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA estimates that a total of 20 establishment fee waivers or reductions will be made for FY 2014. In addition, FDA estimates that another 17 full establishment fees will be exempted this year based on the orphan drug exemption in section 736(k) of the FD&C Act. Subtracting 37 establishments (20 waivers, plus the estimated 17 establishments under the orphan exemption) from 509 leaves a net of 472 fee-paying establishments. FDA will use 472 to estimate the FY 2015 establishments paying fees. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($268,641,333) by the estimated 472 establishments, for an establishment fee rate for FY 2015 of $569,200 (rounded to the nearest hundred dollars).

B. Product Fees

At the beginning of FY 2014, the product fee was based on an estimate that 2,425 products would be subject to and would pay product fees. By the end of FY 2014, FDA estimates that 2,545 products will have been billed for product fees, before all decisions on requests for waivers, reductions, or exemptions are made. FDA assumes that there will be 69 waivers and reductions granted. In addition, FDA estimates that another 42 product fees will be exempted this year based on the orphan drug exemption in section 736(k) of the FD&C Act. FDA estimates that 2,434 products will qualify for product fees in FY 2014, after allowing for an estimated 111 waivers and reductions, including the orphan drug products, and will use this number for its FY 2015 estimate. The FY 2015 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($268,641,333) by the estimated 2,434 products for a FY 2015 product fee of $110,370 (rounded to the nearest ten dollars).

V. Fee Schedule for FY 2015

The fee rates for FY 2015 are set out in table 7:

TABLE 7—FEE SCHEDULE FOR FY 2015

Fee category	Fee rates for FY 2015
Applications:	
Requiring clinical data	$2,335,200
Not requiring clinical data	1,167,600
Supplements requiring clinical data	1,167,600
Establishments	569,200
Products	110,370

VI. Fee Payment Options and Procedures

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received on or after October 1, 2014. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee identification (ID) number on your check, bank draft, or postal money order. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. Contact the U.S. Bank at 314–418–4013 if you have any questions concerning courier delivery.)

Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

Wire transfer payment may also be used. Please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and add it to your payment to ensure that your fee is fully paid. The account information for wire transfers is as follows: New York Federal Reserve Bank, U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993–0002.

Application fees can also be paid online with an electronic check (ACH). FDA has partnered with the U.S. Department of the Treasury to use Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after the user fee ID number is generated.

The tax identification number of FDA is 53–0196965.

B. Establishment and Product Fees

FDA will issue invoices for establishment and product fees for FY 2015 under the new fee schedule in August 2014. Payment will be due on October 1, 2014. FDA will issue invoices in November 2015 for any products and establishments subject to fees for FY 2015 that qualify for fee assessments after the August 2014 billing.

Dated: July 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18113 Filed 7–31–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Correction

The National Institutes of Health NIH published in the **Federal Register** on July 18, 2014 a notice titled ''Proposed Collection; 60-Day Comment Request; A Generic Submission for Formative Research, Pre-Testing, Stakeholder Measures and Advocate Forms at NCI'' [79 FR 42023]. The notice contained an incorrect email address for Kelley Landy, Acting Director of the Office of Advocacy Relations. The correct email address is *kelley.landy@nih.gov*.

Dated: July 28, 2014.

Cynthia Chaves,

NIH Federal Register Liaison.

[FR Doc. 2014–18087 Filed 7–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Recruitment and Screening for the Insight Into Determination of Exceptional Aging and Longevity (IDEAL) Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 2, 2014, Vol. 79, page 18569 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute on Aging (NIA), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Luigi Ferrucci, M.D., Ph.D., NIA Clinical Research Branch, Harbor Hospital, 5th Floor, 3001 S. Hanover, Baltimore, MD 21225 or call non-toll-free number (410) 350–3936 or Email your request, including your address to: *Ferruccilu@grc.nia.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Recruitment and Screening for the Insight into Determination of Exceptional Aging and Longevity (IDEAL) Study (OMB#: 0925–0631). National Institute on Aging (NIA), National Institutes of Health (NIH).

Need and Use of Information Collection

Longevity combined with good health and functionality at the end of life represents a common goal. Although research has examined correlates of long life and functional decline, we still know relatively little about why certain individuals live in excellent health into their eighties while others succumb to failing health at much younger ages. Understanding the mechanisms important to ideal aging may provide new opportunity for health promotion and disability prevention is this rapidly growing segment of the population.

The purpose of IDEAL (Insight into the Determinants of Exceptional Aging and Longevity) is to recruit into the Baltimore Longitudinal Study on Aging (BLSA) exceptionally long lived and healthy individuals and to learn what makes them so resilient and resistant to disease and disability, and to identify potential interventions that may contribute to the IDEAL condition. By enrolling the IDEAL cohort in the BLSA their biologic, physiologic, behavioral and functional characteristics will be evaluated using the same methods used with the current cohort who will serve as a type of control group. The first aim is to identify factors and characteristics that distinguish IDEAL from non-IDEAL individuals. We intend to compare the two groups to identify factors that discriminate IDEAL aging from non-IDEAL aging individuals. The second aim is to identify physiological, environmental and behavioral characteristics that are risk factors for losing the IDEAL condition over several years or longer. We postulate that the mechanisms of extreme longevity probably differ from those associated with delay or escape from disease and disability. As is customary in the BLSA, we plan to follow this cohort for life with yearly visits. This is a request for OMB to approve a reinstatement with change of Recruitment and Screening for the Insight into Determination of Exceptional Aging and Longevity (IDEAL) Study for 3 years.

OMB approval is requested for 3 years. There is no annualized cost to respondents. The total estimated annualized burden hours are 333.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Estimated annual number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Individuals	Recruitment Phone Screen Part 1	500	1	10/60	83
Individuals	Recruitment Phone Screen Part 2	200	1	10/60	33
Individuals	Pre-Visit mailing/Consent	100	1	10/60	17
Individuals	Screening Exam Visit	100	1	2	200

Dated: July 23, 2014.

Jessica Schwartz,

NIA Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–18145 Filed 7–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: August 26, 2014.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jane A. Steinberg, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS).

Dated: July 25, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–18071 Filed 7–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Additional SUDEP CWoW Review.

Date: August 4, 2014.

Time: 5:00 p.m. to 11:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: July 25, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–18070 Filed 7–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Development and Molecular Genetics.

Date: August 26, 2014.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Delvin Knight, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194 MSC 4128, Bethesda, MD 20892–7814, 301.435.1850, *knightdr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: July 28, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–18068 Filed 7–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics, Metabolomics Biochemistry of Mental and Neurologic Disorders.

Date: August 8, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: July 23, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–18072 Filed 7–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–309: Translational Research in Pediatric and Obstetric Pharmacology and Therapeutics.

Date: August 7, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy Sheard, SCD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Channels and Receptors.

Date: August 8, 2014.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter B Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: July 28, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–18069 Filed 7–31–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov*.

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially

developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Gamma-Dynacare Medical Laboratories, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190.

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that

DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2014–18135 Filed 7–31–14; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the combined meeting on August 27, 2014, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) four National Advisory Councils (the SAMHSA National Advisory Council (NAC), the Center for Mental Health Services NAC, the Center for Substance Abuse Prevention NAC, the Center for Substance Abuse Treatment NAC), and the two SAMHSA Advisory Committees (Advisory Committee for Women's Services, and the Tribal Technical Advisory Committee).

The Councils were established to advise the Secretary, Department of Health and Human Services (HHS), the Administrator, SAMHSA, and Center Directors, concerning matters relating to the activities carried out by and through the Centers and the policies respecting such activities.

Under Section 501 of the Public Health Service Act, the Advisory Committee for Women's Services (ACWS) is statutorily mandated to advise the SAMHSA Administrator and the Associate Administrator for Women's Services on appropriate activities to be undertaken by SAMHSA and its Centers with respect to women's substance abuse and mental health services.

Pursuant to Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, SAMHSA established the Tribal Technical Advisory Committee (TTAC) for working with Federally-recognized Tribes to enhance the government-to-government relationship, honor Federal trust responsibilities and obligations to Tribes and American Indian and Alaska Natives. The SAMHSA TTAC serves as an advisory body to SAMHSA.

The August 27 combined meeting will include a report from the SAMHSA Administrator, an update and discussion regarding Military members returning home and their families.

The meeting is open to the public and will be held online via Chorus Call and teleconference. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before August 18, 2014. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before August 18, 2014. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee Web site, *http://nac.samhsa.gov/,* or by contacting Ms. Wood.

Committee Names: Substance Abuse and Mental Health Services Administration National Advisory Council; Center for Mental Health Services National Advisory; Council Center for Substance Abuse Prevention National Advisory Council; Center for Substance Abuse Treatment National Advisory Council; SAMHSA's Advisory Committee for Women's Services; SAMHSA Tribal Technical Advisory Committee.

Date/Time/Type: Wednesday, August 26, 2014, 1:00 p.m.–3:30 p.m. EDT (OPEN).

Place: Chorus call Web cast: *http://services.choruscall.com/links/samhsa140827.html*; Call-in Number (866) 652–5200; Passcode: SAMHSA.

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2253 and Email: *geretta.wood@samhsa.hhs.gov*.

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2014–18166 Filed 7–31–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

National Advisory Committee Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting on of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Committee on August 28, 2014.

The meeting will include an update from the SAMHSA Administrator and discussions regarding Healthcare and Parity Implementation.

The meeting is open to the public and will be held online via Microsoft Office 2007 Live Meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before August 18, 2014. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before August 18, 2014. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee Web site, *http://nac.samhsa.gov/,* or by contacting Geretta P. Wood.

Committee Name: Substance Abuse and Mental Health Services Administration National Advisory Committee (NAC)

Date/Time/Type: August 28, 2014 from 1:00 p.m. to 4:00 p.m. EDT: (OPEN)

Place: Live meeting webcast: *https://www.mymeetings.com/nc/join.php?i=PW7187982&p=AMHSA%20NAC&t=c.*

Conference number: PW7187982.

Audience passcode: SAMHSA NAC.

Dial in number: 888–968–4347.

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–2253 and Email: *geretta.wood@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2014–18161 Filed 7–31–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services (ACWS); Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting on of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on August 26, 2014.

The meeting will include remarks from the Associate Administrator for Women's Services and Chair of the ACWS, discussions on SAMHSA's working definition of trauma and principles and guidance for a trauma-informed approach, the high-risk/high-needs of girls and young women, and an open conversation with the Administrator. The meeting is open to the public and will be held online via Microsoft Office 2007 Live Meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before August 18, 2014. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before August 18, 2014. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee Web site, *http://nac.samhsa.gov/,* or by contacting Nadine Benton.

Committee Name: Substance Abuse and Mental Health Services, Administration Advisory Committee for Women's Services (ACWS).

Date/Time/Type: August 26, 2014 from 1:00 p.m. to 4:00 p.m. EDT: (OPEN).

Place: Live meeting Web cast.

Participants can join the event directly at: *https://www.mymeetings.com/nc/join.php?i=PW7187964&p=SAMHSA%20ACWS&t=c*

Conference number: PW7187964.

Audience passcode: SAMHSA ACWS.

Call-in number: 800–857–9804.

Contact: Nadine Benton, Acting Designated Federal Official, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–0127, Fax: (240) 276–2252, Email: *nadine.benton@samhsa.hhs.gov.*

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2014–18162 Filed 7–31–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0034]

The Critical Infrastructure Partnership Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Quarterly Critical Infrastructure Partnership Advisory Council membership update.

SUMMARY: The Department of Homeland Security (DHS) announced the establishment of the Critical Infrastructure Partnership Advisory Council (CIPAC) in a **Federal Register** Notice (71 FR 14930–14933) dated March 24, 2006, which identified the purpose of CIPAC, as well as its membership. This notice provides: (i) Quarterly CIPAC membership updates; (ii) instructions on how the public can obtain the CIPAC membership roster and other information on the council; and (iii) information on recently completed CIPAC meetings.

FOR FURTHER INFORMATION CONTACT: Larry May, Designated Federal Officer, Critical Infrastructure Partnership Advisory Council, Sector Outreach and Programs Division, Office of Infrastructure Protection, National Protection and Programs Directorate, U.S. Department of Homeland Security, 245 Murray Lane, Mail Stop 0607, Arlington, VA 20598–0607; telephone: (703) 603–5070; email: *CIPAC@dhs.gov.*

Responsible DHS Official: Larry May, Designated Federal Officer for the CIPAC.

SUPPLEMENTARY INFORMATION:

Purpose and Activity: The CIPAC facilitates interaction between government officials and representatives of the community of owners and/or operators for each of the critical infrastructure sectors defined by Presidential Policy Directive (PPD) 21 and identified in *National Infrastructure Protection Plan 2013: Partnering for Critical Infrastructure Security and Resilience.* The scope of activities covered by the CIPAC includes: planning; coordinating among government and critical infrastructure owner and operator security partners; implementing security program initiatives; conducting operational activities related to critical infrastructure protection security measures, incident response, recovery, and infrastructure resilience; reconstituting critical infrastructure assets and systems for both manmade and naturally occurring events; and sharing threat, vulnerability, risk mitigation, and infrastructure continuity information.

Organizational Structure: CIPAC members are organized into 16 critical infrastructure sectors. Each of these sectors has a Government Coordinating Council (GCC) whose membership includes: (i) A lead Federal agency that is defined as the Sector-Specific Agency; (ii) all relevant Federal, State, local, tribal, and/or territorial government agencies (or their representative bodies) whose mission interests also involve the scope of the CIPAC activities for that particular sector; and (iii) a Sector Coordinating Council (SCC) whose membership includes critical infrastructure owners and/or operators or their representative trade associations.

CIPAC Membership: CIPAC Membership may include:

(i) Critical Infrastructure (CI) owner and operator members of a DHS-recognized Sector SCC, including their representative trade associations or equivalent organization members of an SCC as determined by the SCC.

(ii) Federal, State, local, and tribal governmental entities comprising the members of the GCC for each sector, including their representative organizations; members of the State, Local, Tribal, and Territorial Government Coordinating Council; and representatives of other Federal agencies with responsibility for CI activities.

CIPAC membership is organizational. Multiple individuals may participate in CIPAC activities on behalf of a member organization as long as member representatives are not federally registered lobbyists.

CIPAC Membership Roster and Council Information: The current roster of CIPAC members is published on the CIPAC Web site (*http://www.dhs.gov/cipac*) and is updated as the CIPAC membership changes. Members of the public may visit the CIPAC Web site at any time to view current CIPAC membership, as well as the current and historic lists of CIPAC meetings and agendas.

Dated: July 25, 2014.

Larry L. May,

Designated Federal Officer for the CIPAC.

[FR Doc. 2014–18100 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2014–0024; OMB No. 1660–0057]

Agency Information Collection Activities: Proposed Collection; Comment Request; Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of data from citizens living in the Immediate Response Zones and Protection Action Zones surrounding chemical stockpile sites.

DATES: Comments must be submitted on or before September 30, 2014.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2014–0024. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulatory Affairs Division, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Warnock, Program Specialist, Technological Hazards Division, National Preparedness Directorate, at (202) 657–2301 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 212–4701 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Chemical Stockpile Emergency Preparedness Program (CSEPP) is one facet of the multi-hazard readiness program in two States that deal with hazardous material spills or releases. The program's goal is to improve preparedness to protect the people of these communities in the unlikely event of an accident. CSEPP, a cooperative effort between FEMA and the U.S. Army, provides funding (grants), training, community outreach, guidance, technical support and expertise to State, local, and Tribal governments to improve their capabilities to prepare for and respond to this type of disaster. Since no preparedness program can be successful without the public's understanding and cooperation, input from the residents and businesses of immediate and/or surrounding areas is vital for program managers' ability to design custom-tailored strategies to educate and communicate risks and action plans at the local level. This survey, which was initiated six years ago, will continue as the assessment mechanism to document and quantify program achievements. The authorities supporting this information collection include: (1) 42 U.S.C. 5131; (2) 50 U.S.C 1521; (3) the Government Performance and Results Act of 1993, Public Law 103–62, 107 Stat. 285; (4) the Government Performance and Results Modernization Act of 2010, Public Law 111–352; 124 Stat. 3866; (5) Executive Order 12862, and its March 23, 1995 Memorandum addendum, ''Improving Customer Service''; and (6) Executive Order 13571, and its June 13, 2011 Memorandum ''Implementing Executive Order 13571 on Streamlining Service Delivery and Improving Customer Service.''

Collection of Information

Title: Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: FEMA Form 008–0–3, Pueblo EPZ Residential Survey; FEMA Form 008–0–3INT, Pueblo EPZ Residential Survey; FEMA Form 008–0–4, Pueblo City Residential Survey; FEMA Form 008–0–5, Pueblo EPZ Business Survey; and FEMA Form 008–0–7, Blue Grass EPZ Residential Survey.

Abstract

To support the development of public outreach and education efforts that will improve emergency preparedness, DHS/FEMA's Chemical Stockpile Emergency Preparedness Program (CSEPP) will collect data from the citizens living in the Immediate Response Zones and Protective Action Zones surrounding stockpile sites. Program managers use survey data findings to evaluate public awareness of protective actions at CSEPP sites, and identify outreach weaknesses and strengths to develop effective outreach and education campaigns. Results from this information collection are shared with State, local, Tribal, and other FEMA officials for subsequent action plans addressing program-wide and stockpile site-specific issues. Results are also shared with other Federal agencies that lend expertise in specific areas of the program.

Affected Public: Individuals or households, business or other for-profit.

Number of Respondents: 2,098.

Number of Responses: 2,098.

Estimated Total Annual Burden Hours: 493.94 hours.

Estimated Cost: There are no record keeping, capital, startup or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: July 14, 2010.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2014–18290 Filed 7–31–14; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2014–0008; OMB No. 1660–0129]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Federal Emergency Management Agency Individual Assistance Survivor Centric Customer Satisfaction Surveys (Formerly, Follow-Up Program Effectiveness & Recovery Survey)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before September 2, 2014.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472, facsimile number (202) 212–4701, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Changes Since Publication of the 60 Day Federal Register Notice for the Federal Emergency Management Agency Individual Assistance Survivor Centric Customer Satisfaction Surveys (Formerly, Follow-Up Program Effectiveness & Recovery Survey

The number of respondents and the estimated burden hours have increased since FEMA published the the 60 day **Federal Register** Notice on February 28, 2014. *See* 79 FR 11456. This is due to an increase in the number of times the surveys are conducted from quarterly to approximately six times per year, the addition of focus groups, and additional questions covering survey topics whose answers will provide timely customer satisfaction results and benefit the divisions and offices managing FEMA's Individual Assistance programs. The respondent burden increased from 1,536 to 2,832, for an increase of 1,296 respondents. The burden hours increased from 307 to 1,545, for an increase of 1,238 hours. The annual cost has incrased from $0.00 to $8,604 for travel to focus groups.

Collection of Information

Title: Federal Emergency Management Agency Individual Assistance Survivor Centric Customer Satisfaction Surveys (formerly, Follow-Up Program Effectiveness & Recovery Survey).

Type of information collection: Revision of a currently approved collection.

Form Titles and Numbers: FEMA Form 007–0–14, and Federal Emergency Management Agency Individual Assistance Survivor Centric Customer Satisfaction Surveys.

Abstract: Federal agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with those services. FEMA managers use the survey results to measure performance against standards for performance and customer service, measure achievement of strategic planning objectives, and generally gauge and make improvements to disaster service that increase customer satisfaction.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 2,832.

Estimated Total Annual Burden Hours: 1,545.

Estimated Cost: $8,604.00.

Dated: July 17, 2014

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2014–18258 Filed 7–31–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2014–0023; OMB No. 1660–0107]

Agency Information Collection Activities: Proposed Collection; Comment Request; Federal Emergency Management Agency Public Assistance Customer Satisfaction Surveys

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of Public Assistance customer satisfaction survey responses and information for assessment and improvement of the delivery of disaster assistance to States, Local and Tribal governments, and eligible non-profit organizations.

DATES: Comments must be submitted on or before September 30, 2014.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2014–0023. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE 35, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking

Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Maggie Billing, Program Analyst, Customer Satisfaction Analysis Section of the National Processing Service Center Division, Recovery Directorate, at (940) 891–8709 or *maggie.billing@fema.dhs.gov.* You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 212–4701 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: This collection is in accordance with Executive Orders 12862 and 13571 requiring all Federal agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act of 1993 (GPRA) requires Federal agencies to set missions and goals and to measure agency performance against them. *See* Public Law 103–62, 107 Stat 285 (1993). The GPRA Modernization Act of 2010 requires quarterly performance assessments of government programs for the purposes of assessing agency performance and improvement. *See* H.R. 2142. The Federal Emergency Management Agency fulfills these requirements by collecting customer satisfaction program information through surveys of States, Local and Tribal governments, and eligible non-profit organizations.

Collection of Information

Title: Federal Emergency Management Agency Public Assistance Customer Satisfaction Surveys.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: FEMA Form 519–0–1 T, Public Assistance Customer Satisfaction Survey (Telephone); FEMA Form 519–0–1 INT, Public Assistance Customer Satisfaction Survey (Internet); FEMA Form 519–0–1, Public Assistance Customer Satisfaction Survey (Fill-able).

Abstract: Federal agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with those services. FEMA managers use the survey results to measure performance against standards for performance and customer service, measure achievement of strategic planning objectives, and generally gauge and make improvements to disaster service that increase customer satisfaction.

Affected Public: State, Local, Tribal government and eligible non-profit organizations.

Number of Respondents: 12,740.

Number of Responses: 12,740.

Estimated Total Annual Burden Hours: 4,341.

Estimated Cost: $12,204.00.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: July 10, 2014.

Loretta Cassatt,

Branch Chief, Records, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2014–18224 Filed 7–31–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1428]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Autauga	City of Prattville (14–04–4875P).	The Honorable Bill Gillespie, Jr., Mayor, City of Prattville, 101 West Main Street, Prattville, AL 36067.	Planning and Development Department, City Hall Annex, 102 West Main Street, Prattville, AL 36067.	*http://www.msc.fema.gov/lomc*	September 22, 2014.	010002
Autauga	City of Prattville (14–04–4876P).	The Honorable Bill Gillespie, Jr., Mayor, City of Prattville, 101 West Main Street, Prattville, AL 36067.	Planning and Development Department, City Hall Annex, 102 West Main Street, Prattville, AL 36067.	*http://www.msc.fema.gov/lomc*	September 22, 2014.	010002
Autauga	Unincorporated areas of Autauga County (14–04–4875P).	The Honorable Carl Johnson, Chairman, Autauga County Board of Commissioners, 135 North Court Street, Suite B, Prattville, AL 36067.	Autauga County Emergency Management Agency, 826 Gillespie Street, Prattville, AL 36067.	*http://www.msc.fema.gov/lomc*	September 22, 2014.	010314
Autauga	Unincorporated areas of Autauga County (14–04–4876P).	The Honorable Carl Johnson, Chairman, Autauga County Board of Commissioners, 135 North Court Street, Suite B, Prattville, AL 36067.	Autauga County Emergency Management Agency, 826 Gillespie Street, Prattville, AL 36067.	*http://www.msc.fema.gov/lomc*	September 22, 2014.	010314
Arizona:						
Maricopa	Town of Buckeye (14–09–0978P).	The Honorable Jackie A. Meck, Mayor, Town of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Town Hall, 100 North Apache Street, Suite A, Buckeye, AZ 85326.	*http://www.msc.fema.gov/lomc*	September 12, 2014.	040039
Pima	City of Tucson (13–09–3317P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, 255 West Alameda, 10th Floor, Tucson, AZ 85701.	Planning and Development Services Department, 201 North Stone, 1st Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	September 29, 2014.	040076
Pima	Town of Marana (14–09–1828P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, 11555 West Civic Center Drive, Marana, AZ 85653.	*http://www.msc.fema.gov/lomc*	September 29, 2014.	040118
Pima	Unincorporated areas of Pima County (14–09–1828P).	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	September 29, 2014.	040073
Pima	Unincorporated areas of Pima County (14–09–1215P).	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	September 3, 2014.	040073

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Pinal	Unincorporated areas of Pinal County (13–09–1389P).	The Honorable Anthony Smith, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, AZ 85132.	Pinal County Engineering Department, 31 North Pinal Street, Building F, Florence, AZ 85232.	*http://www.msc.fema.gov/lomc*	September 12, 2014.	040077
California:						
Alameda	City of Fremont, (13–09–2956P).	The Honorable Bill Harrison, Mayor, City of Fremont, 3300 Capitol Avenue, Fremont, CA 94538.	Development Services Center, 39550 Liberty Street, Fremont, CA 94538.	*http://www.msc.fema.gov/lomc*	October 13, 2014	065028
Kern	City of Delano, (14–09–2143P).	The Honorable Grace Vallejo, Mayor, City of Delano, P.O. Box 3010, Delano, CA 93216.	Community Development Department, 1015 11th Avenue, Delano, CA 93216.	*http://www.msc.fema.gov/lomc*	September 26, 2014.	060078
Colorado: El Paso	Unincorporated areas of El Paso County (14–08–0489P).	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Floodplain Administrator, 2880 International Circle, Colorado Springs, CO 80910.	*http://www.msc.fema.gov/lomc*	October 14, 2014	080059
Florida:						
Marion	Unincorporated areas of Marion County (14–04–2852P).	The Honorable Carl Zalak, III, Chairman, Marion County Board of Commissioners, 601 Southeast 25th Avenue, Ocala, FL 34471.	Transportation Department, 412 Southeast 25th Avenue, Ocala, FL 34471.	*http://www.msc.fema.gov/lomc*	October 13, 2014	120160
Monroe	City of Marathon (14–04–4871P).	The Honorable Dick Ramsay, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc*	September 12, 2014.	120681
Seminole	Unincorporated areas of Seminole County (14–04–0226P).	The Honorable Bob Dallari, Chairman, Seminole County Board of Commissioners, 1101 East 1st Street, Sanford, FL 32771.	Building Division, 1101 East 1st Street, Sanford, FL 32771.	*http://www.msc.fema.gov/lomc*	September 12, 2014.	120289
Walton	City of Freeport (14–04–1147P).	The Honorable Russ Barley, Mayor, City of Freeport, P.O. Box 339, Freeport, FL 32439.	City Hall, 112 Highway 20 West, Freeport, FL 32439.	*http://www.msc.fema.gov/lomc*	October 10, 2014	120319
Hawaii: Hawaii	Hawaii County (13–09–2726P).	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Steet, Hilo, HI 96720.	Hawaii County Department of Public Works, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	*http://www.msc.fema.gov/lomc*	September 22, 2014.	155166
Kentucky: Jefferson	Louisville-Jefferson County Metro Government (14–04–0120P).	The Honorable Greg Fischer, Mayor, Louisville-Jefferson County Metro Government, 527 West Jefferson Street, Louisville, KY 40202.	Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	*http://www.msc.fema.gov/lomc*	September 29, 2014.	210120
Mississippi:						
Oktibbeha	City of Starkville (12–04–7758P).	The Honorable Parker Wiseman, Mayor, City of Starkville, 101 East Lampkin Street, Starkville, MS 39759.	City Hall, 101 East Lampkin Street, Starkville, MS 39759.	*http://www.msc.fema.gov/lomc*	October 6, 2014	280124
Oktibbeha	Unincorporated areas of Oktibbeha County (12–04–7758P).	The Honorable Orlando Trainer, President, Oktibbeha County Board of Supervisors, 101 East Lampkin Street, Starkville, MS 39759.	Oktibbeha County Courthouse, 101 East Lampkin Street, Starkville, MS 39759.	*http://www.msc.fema.gov/lomc*	October 6, 2014	280277
Nevada:						
Clark	Unincorporated areas of Clark County (14–09–0768P).	The Honorable Steve Sisolak, Chairman, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Clark County Public Works Department, 500 South Grand Central Parkway, Las Vegas, NV 89155.	*http://www.msc.fema.gov/lomc*	September 10, 2014.	320003
Washoe	City of Reno (14–09–0059P).	The Honorable Robert Cashell, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	City Hall, 450 Sinclair Street, Reno, NV 89501.	*http://www.msc.fema.gov/lomc*	August 21, 2014	320020
New York:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Orange	Town of New Windsor (13–02–1014P).	The Honorable George A. Green, Supervisor, Town of New Windsor, 555 Union Avenue, New Windsor, NY 12553.	Town Hall, 555 Union Avenue, New Windsor, NY 12553.	*http://www.msc.fema.gov/lomc*	November 5, 2014.	360628
Rockland	Town of Clarkstown (13–02–1013P).	The Honorable Alexander J. Gromack, Supervisor, Town of Clarkstown, 10 Maple Avenue, New City, NY 10956.	Town Hall, 10 Maple Avenue, New City, NY 10956.	*http://www.msc.fema.gov/lomc*	November 19, 2014.	360679
North Dakota:						
Stark	City of Dickinson (14–08–0354P).	The Honorable Dennis W. Johnson, Mayor, City of Dickinson, 99 2nd Street East, Dickinson, ND 58601.	Building Department, 99 2nd Street East, Dickinson, ND 58601.	*http://www.msc.fema.gov/lomc*	September 5, 2014.	380117
Stark	Unincorporated areas of Stark County (14–08–0354P).	The Honorable Russ Hoff, Chairman, Stark County Board of Commissioners, P.O. Box 130, Dickinson, ND 58602.	Stark County Recorder, 51 3rd Street East, Dickinson, ND 58602.	*http://www.msc.fema.gov/lomc*	September 5, 2014.	385369
South Carolina:						
Jasper	Town of Hardeeville (14–04–1941P).	The Honorable Bronco Bostick, Mayor, Town of Hardeeville, 205 East Main Street, Hardeeville, SC 29927.	City Hall, 205 Main Street, Hardeeville, SC 29927.	*http://www.msc.fema.gov/lomc*	September 18, 2014.	450113
Jasper	Unincorporated areas of Jasper County (14–04–1941P).	The Honorable Barbara Clark, Chair, Jasper County Council, P.O. Box 1149, Ridgeland, SC 29936.	Jasper County Planning Department, 358 3rd Avenue, Ridgeland, SC 29936.	*http://www.msc.fema.gov/lomc*	September 18, 2014.	450112
Richland	Unincorporated areas of Richland County (13–04–8158P).	The Honorable Norman Jackson, Chairman, Richland County Council, P.O. Box 90617, Columbia, SC 29209.	Richland County Courthouse, 1701 Main Street, Columbia, SC 29202.	*http://www.msc.fema.gov/lomc*	September 15, 2014.	450170
Utah:						
Salt Lake	City of West Jordan (13–08–1221P).	The Honorable Kim V. Rolfe, Mayor, City of West Jordan, 8000 South Redwood Road, West Jordan, UT 84088.	City Hall, 8000 South Redwood Road, West Jordan, UT 84088.	*http://www.msc.fema.gov/lomc*	September 11, 2014.	490108
Weber	City of Ogden (13–08–0663P).	The Honorable Mike Caldwell, Mayor, City of Ogden, 2549 Washington Boulevard, Ogden, UT 84401.	City Hall, 2549 Washington Boulevard, Ogden, UT 84401.	*http://www.msc.fema.gov/lomc*	September 22, 2014.	490189

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18105 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been

published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arkansas:					
Benton (FEMA Docket No.: B–1408).	City of Bentonville (12–06–3754P).	The Honorable Bob McCaslin, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	305 Southwest A Street, Bentonville, AR 72712.	June 26, 2014	050012
Garland (FEMA Docket No.: B–1408).	City of Hot Springs (12–06–3592P).	The Honorable Ruth Carney, Mayor, City of Hot Springs, 133 Convention Boulevard, Hot Springs National Park, AR 71901.	Hot Springs City Hall Annex, 111 Opera Street, Hot Springs National Park, AR 71901.	June 26, 2014	050084
Maryland: Frederick (FEMA Docket No.: B–1405).	City of Frederick (14–03–0540P).	The Honorable Randy McClement, Mayor, City of Frederick, 101 North Court Street, Frederick, MD 21701.	Department of Engineering, 140 West Patrick Street, Frederick, MD 21701.	June 23, 2014	240030
Oklahoma: Oklahoma (FEMA Docket No.: B–1405).	City of Oklahoma City (13–06–3216P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	June 9, 2014	405378
Pennsylvania: Bucks (FEMA Docket No.: B–1405).	Borough of New Hope (14–03–0111P).	Mr. John Burke, Manager, Borough of New Hope, 123 New Street, New Hope, PA 18938.	Borough Hall, 123 New Street, New Hope, PA 18938.	June 9, 2014	420195
Texas:					
Bexar (FEMA Docket No.: B–1408).	City of San Antonio (14–06–0172P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	June 23, 3014	480045
Bexar (FEMA Docket No.: B–1408).	City of San Antonio (14–06–0677P).	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	June 23, 3014	480045
Harris (FEMA Docket No.: B–1408).	City of Houston (13–06–4399P).	The Honorable Annise D. Parker, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Public Works and Engineering Department, 611 Walker Street, Houston, TX 77002.	June 26, 2014	480296
Harris (FEMA Docket No.: B–1408).	Unincorporated areas of Harris County (13–06–4399P).	The Honorable Ed M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	June 26, 2014	480287
Travis (FEMA Docket No.: B–1405).	Unincorporated areas of Travis County (13–06–3649P).	The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Administration Building, Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	June 12, 2014	481026
Virginia:					
Fairfax (FEMA Docket No.: B–1405).	Unincorporated areas of Fairfax County (13–03–2380P).	Mr. Edward L. Long, Jr., Fairfax County Executive, 12000 Government Center Parkway, Fairfax, VA 22035.	Fairfax County, Stormwater Planning Division, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	June 16, 2014	515525
Spotsylvania (FEMA Docket No.: B–1408).	Unincorporated areas of Spotsylvania County (13–03–1116P).	Mr. C. Douglas Barnes, Spotsylvania County Administrator, 9104 Courthouse Road, Spotsylvania, VA 22553.	Spotsylvania County, Environmental Engineering Office, 9019 Old Battlefield Boulevard, Suite 300, Spotsylvania, VA 22553.	June 5, 2014	510308
West Virginia:					
Cabell (FEMA Docket No.: B–1408).	Unincorporated areas of Cabell County (13–03–0925P).	The Honorable Nancy Cartmill, President, Cabell County Commission, 750 5th Avenue, Suite 300, Huntington, WV 25701.	Cabell County Office of Grants, Planning and Permits, 750 5th Avenue, Suite 314, Huntington, WV 25701.	June 26, 2014	540016
Cabell (FEMA Docket No.: B–1408).	Village of Barboursville (13–03–0925P).	The Honorable Paul L. Turman, Sr., Mayor, Village of Barboursville, P.O. Box 266, Barboursville, WV 25504.	Village Hall, 721 Central Avenue, Barboursville, WV 25504.	June 26, 2014	540017

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18107 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov*.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Baldwin (FEMA Docket No.: B–1411).	City of Gulf Shores (13–04–7450P).	The Honorable Robert Craft, Mayor, City of Gulf Shores, P.O. Box 299, Gulf Shores, AL 36547.	Community Development Department, 1905 West 1st Street, Gulf Shores, AL 36547.	June 16, 2014	015005
Houston (FEMA Docket No.: B–1411).	City of Dothan (13–04–5057P).	The Honorable Mike Schmitz, Mayor, City of Dothan, P.O. Box 2128, Dothan, AL 36302.	Engineering Department, 126 North St. Andrews Street, Dothan, AL 36303.	June 20, 2014	010104
Arizona:					
Maricopa (FEMA Docket No.: B–1417).	City of Phoenix (13–09–1002P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	June 6, 2014	040051
Pima (FEMA Docket No.: B–1411).	Unincorporated areas of Pima County, (13–09–3190P).	The Honorable Ramon Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	June 6, 2014	040073
California:					
San Bernardino (FEMA Docket No.: B–1411).	City of Fontana, (14–09–0709P).	The Honorable Acquanetta Warren, Mayor, City of Fontana, 8353 Sierra Avenue, Fontana, CA 92335.	Engineering Department, 8353 Sierra Avenue, Fontana, CA 92335.	June 13, 2014	060274
Sonoma (FEMA Docket No.: B–1411).	City of Petaluma, (14–09–1064P).	The Honorable David Glass, Mayor, City of Petaluma, 11 English Street, Petaluma, CA 94952.	Department of Public Works and Utilities, 11 English Street, Petaluma, CA 94952.	June 20, 2014	060379
Sutter (FEMA Docket No.: B–1417).	City of Live Oak, (14–09–0812P).	The Honorable Steve Alvarado, Mayor, City of Live Oak, 9955 Live Oak Boulevard, Live Oak, CA 95953.	Building Department, 9955 Live Oak Boulevard, Live Oak, CA 95953.	June 13, 2014	060395
Florida:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Bay (FEMA Docket No.: B–1411).	City of Panama City Beach (13–04-6018P).	The Honorable Gayle Oberst, Mayor, City of Panama City Beach, 110 South Arnold Road, Panama City Beach, FL 32413.	Building Department, 110 South Arnold Road, Panama City Beach, FL 32413.	June 20, 2014	120013
Bay (FEMA Docket No.: B–1411).	City of Panama City Beach (13–04-8211P).	The Honorable Gayle Oberst, Mayor, City of Panama City Beach, 110 South Arnold Road, Panama City Beach, FL 32413.	Building Department, 110 South Arnold Road, Panama City Beach, FL 32413.	June 20, 2014	120013
Bay (FEMA Docket No.: B–1411).	Unincorporated areas of Bay County (13–09-8211P).	The Honorable Guy M. Tunnell, Chairman, Bay County Board of Commissioners, 808 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Department, 707 Jenks Avenue, Suite B, Panama City, FL 32401.	June 20, 2014	120004
Broward (FEMA Docket No.: B–1407).	Town of Lauderdale-By-The-Sea (13–04–6349P).	The Honorable Roseann Minnet, Mayor, Town of Lauderdale-By-The-Sea, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.	Town Hall, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.	April 18, 2014	125123
Charlotte (FEMA Docket No.: B–1417).	Unincorporated areas of Charlotte County (14–04–0645P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	May 30, 2014	120061
Escambia (FEMA Docket No.: B–1417).	Pensacola Beach-Santa Rosa Island Authority (13–04–6705P).	The Honorable Thomas A. Campanella, Chairman, Pensacola Beach-Santa Rosa Island Authority Board of Commissioners, P.O. Box 1208, Pensacola Beach, FL 32562.	Development Department, 1 Via De Luna, Pensacola Beach, FL 32562.	June 2, 2014	125138
Escambia (FEMA Docket No.: B–1417).	Unincorporated areas of Escambia County (13–04–7536P).	The Honorable Gene M. Valentino, Chairman, Escambia County Board of Commissioners, 221 Palafox Place, Suite 400, Pensacola, FL 32502.	Escambia County Development Services Department, 3363 West Park Place, Pensacola, FL 32505.	June 16, 2014	120080
Pinellas (FEMA Docket No.: B–1417).	City of Dunedin (13–04–7013P).	The Honorable Dave Eggers, Mayor, City of Dunedin, 542 Main Street, Dunedin, FL 34698.	Engineering Department, 542 Main Street, Dunedin, FL 34698.	June 9, 2014	125103
Georgia:					
Coweta (FEMA Docket No.: B–1417).	City of Newnan (14–04–1178P).	The Honorable Keith Brady, Mayor, City of Newnan, 25 LaGrange Street, Newnan, GA 30263.	City Hall, 25 LaGrange Street, Newnan, GA 30263.	May 30, 2014	130062
Muscogee (FEMA Docket No.: B–1417).	City of Columbus-Muscogee County (Consolidated Government), (12–04–2939P).	The Honorable Teresa Tomlinson, Mayor, City of Columbus-Muscogee County (Consolidated Government), 100 10th Street, Columbus, GA 31901.	Department of Engineering, 420 10th Street, Columbus, GA 31901.	June 2, 2014	135158
South Carolina: Lexington (FEMA Docket No.: B–1417).	Unincorporated areas of Lexington County (14–04–0721P).	The Honorable William B. Banning, Sr., Chairman, Lexington County Council, 2109 Beaver Lane, West Columbia, SC 29169.	Lexington County Planning Department, County Administration Building, 212 South Lake Drive, Lexington, SC 29072.	June 6, 2014	450129
South Dakota:					
Minnehaha (FEMA Docket No.: B–1411).	City of Hartford (13–08–1106P).	The Honorable Paul Zimmer, Mayor, City of Hartford, P.O. Box 727, Hartford, SD 57033.	City Hall, 125 North Main Avenue, Hartford, SD 57033.	June 16, 2014	460180
Minnehaha (FEMA Docket No.: B–1411).	Unincorporated areas of Minnehaha County (13–08–1106P).	The Honorable Cindy Heiberger, Chair, Minnehaha County Board of Commissioners, 415 North Dakota Avenue, Sioux Falls, SD 57104.	Minnehaha County Planning Department, 415 North Dakota Avenue, Sioux Falls, SD 57104.	June 16, 2014	460057

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18099 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1424]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes,

the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
New Jersey: Sussex.	Township of Byram (14–02–1064P).	The Honorable James Oscovitch, Mayor, Township of Byram, 10 Mansfield Drive, Stanhope, NJ 07874.	Byram Township, Municipal Building, 10 Mansfield Drive, Stanhope, NJ 07874.	*http://www.msc.fema.gov/lomc.*	October 2, 2014	340557
Oklahoma:						
Oklahoma	City of Oklahoma City (12–06–2442P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	*http://www.msc.fema.gov/lomc.*	September 11, 2014	405378
Oklahoma	City of Oklahoma City (13–06–2471P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	*http://www.msc.fema.gov/lomc.*	September 11, 2014	405378
Oklahoma	City of Oklahoma City (14–06–0267P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	*http://www.msc.fema.gov/lomc.*	October 9, 2014	405378
Texas:						
Bexar	Unincorporated areas of Bexar County (14–06–0469P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.msc.fema.gov/lomc.*	September 11, 2014	480035

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Coryell	City of Copperas Cove (13–06–4315P).	The Honorable John Hull, Mayor, City of Copperas Cove, 507 South Main Street, Copperas Cove, TX 76522.	914 South Main Street, Suite G, Copperas Cove, TX 76522.	*http://www.msc.fema.gov/lomc.*	September 15, 2014	480155
Denton	City of Denton (13–06–3379P).	The Honorable Mark A. Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	901–A Texas Street, Denton, TX 76209.	*http://www.msc.fema.gov/lomc.*	September 15, 2014	480194
Denton	Unincorporated areas of Denton County (13–06–3783P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.msc.fema.gov/lomc.*	September 15, 2014	480774
Harris	City of Houston (14–06–1647P).	The Honorable Annise D. Parker, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Public Works and Engineering Department, 611 Walker Street, Houston, TX 77002.	*http://www.msc.fema.gov/lomc.*	October 6, 2014	480296
Harris	Unincorporated areas of Harris County (14–06–0575P).	The Honorable Ed M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.msc.fema.gov/lomc.*	September 15, 2014	480287
Harris	Unincorporated areas of Harris County (14–06–1080P).	The Honorable Ed M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.msc.fema.gov/lomc.*	October 10, 2014	480287
New Jersey: Sussex.	Township of Byram (14–02–1064P).	The Honorable James Oscovitch, Mayor, Township of Byram, 10 Mansfield Drive, Stanhope, NJ 07874.	Byram Township Municipal Building, 10 Mansfield Drive, Stanhope, NJ 07874.	*http://www.msc.fema.gov/lomc.*	October 2, 2014	340557
Oklahoma:						
Oklahoma	City of Oklahoma City (12–06–2442P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	*http://www.msc.fema.gov/lomc.*	September 11, 2014	405378
Oklahoma	City of Oklahoma City (13–06–2471P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	420 West Main Street, Suite 700, Oklahoma City, OK 73102.	*http://www.msc.fema.gov/lomc.*	September 11, 2014	405378
Texas:						
Harris	Unincorporated areas of Harris County (14–06–1647P).	The Honorable Ed M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.msc.fema.gov/lomc.*	October 6, 2014	480287
Harris	Unincorporated areas of Harris County (14–06–1656P).	The Honorable Ed M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.msc.fema.gov/lomc.*	October 3, 2014	480287
McLennan	City of Robinson (13–06–4191P).	The Honorable Bryan Ferguson, Mayor, City of Robinson, 111 West Lyndale Drive, Robinson, TX 76706.	City Hall, 111 West Lyndale Drive, Robinson, TX 76706.	*http://www.msc.fema.gov/lomc.*	October 8, 2014	480460
Rockwall	City of Rockwall (14–06–0263P).	The Honorable David Sweet, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	City Hall, 385 South Goliad Street, Rockwall, TX 75087.	*http://www.msc.fema.gov/lomc.*	August 29, 2014	480547
Tarrant	City of Haslet (13–06–4452P).	The Honorable Bob Golden, Mayor, City of Haslet, 101 Main Street, Haslet, TX 76052.	City Hall, 101 Main Street, Haslet, TX 76052.	*http://www.msc.fema.gov/lomc.*	September 4, 2014	480600
Virginia:						
Albemarle	Unincorporated areas of Albemarle County (14–03–0863P).	Mr. Thomas Foley, Albemarle County Executive, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County, Department of Community Development, 401 McIntire Road, Charlottesville, VA 22902.	*http://www.msc.fema.gov/lomc.*	September 24, 2014	510006

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
City of Charlottesville.	Independent City of Charlottesville (14–03–0863P).	The Honorable Satyendra Huja, Mayor, City of Charlottesville, P.O. Box 911, Charlottesville, VA 22902.	City Hall, Neighborhood Development Department, 610 East Market Street Charlottesville, VA 22902.	*http://www.msc.fema.gov/lomc.*	September 24, 2014	510033

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18102 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1426]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 30, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1426, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

I. Watershed-based studies:

Community	Community map repository address
Lower Kansas Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Wyandotte County, Kansas, and Incorporated Areas	
City of Bonner Springs	City Hall, 205 East 2nd Street, Bonner Springs, KS 66012.
City of Edwardsville	City Hall, 690 South 4th Street, Edwardsville, KS 66111.
City of Kansas City	City Hall, 701 North 7th Street, Kansas City, KS 66101.
Unincorporated Areas of Wyandotte County	City Hall, 701 North 7th Street, Kansas City, KS 66101.
Douglas County, Kansas, and Incorporated Areas	
City of Lawrence	City Hall, 6 East 6th Street, Lawrence, KS 66044.
Unincorporated Areas of Douglas County	Douglas County Courthouse, 1100 Massachusetts Street, Lawrence, KS 66044.
Lower Wisconsin Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Dane County, Wisconsin, and Incorporated Areas	
Unincorporated Areas of Dane County	City County Building, 210 Martin Luther King Jr. Boulevard #116, Madison, WI 53703.
Village of Belleville	Village Hall, 24 West Main Street, Belleville, WI 53508.
Village of Black Earth	Village Hall, 1210 Mills Street, Black Earth, WI 53515.
Village of Cross Plains	Village Hall, 2417 Brewery Road, Cross Plains, WI 53528.
Village of Mazomanie	Village Hall, 133 Crescent Street, Mazomanie, WI 53560.
Iowa County, Wisconsin, and Incorporated Areas	
City of Dodgeville	City Hall, 100 East Fountain Street, Dodgeville, WI 53533.
City of Mineral Point	City Hall, 137 High Street, Suite 1, Mineral Point, WI 53565.
Unincorporated Areas of Iowa County	Iowa County Zoning Office, 222 North Iowa Street, Dodgeville, WI 53533.
Village of Avoca	Village Hall, 401 Wisconsin Street, Avoca, WI 53506.
Village of Barneveld	Village Hall, 403 East County ID, Barneveld, WI 53507.
Village of Blanchardville	Village Hall, 208 Mason Street, Blanchardville, WI 53516.
Village of Cobb	Village Hall, 501 Benson Street, Cobb, WI 53526.
Village of Hollandale	Village Hall, 200 5th Avenue, Hollandale, WI 53544.
Village of Linden	Village Hall, 444 Jefferson Avenue, Linden, WI 53553.
Village of Ridgeway	Village Hall, 113 Dougherty Court, Ridgeway, WI 53582.
Richland County, Wisconsin, and Incorporated Areas	
City of Richland Center	City Hall, 450 South Main Street, Richland Center, WI 53581.
Unincorporated Areas of Richland County	Zoning Administrator Office, 181 West Seminary Street, Room 309, Richland Center, WI 53581.
Village of Boaz	Village Hall, 25433 Jackson Street, Richland Center, WI 53581.
Village of Cazenovia	Village Hall, 310 North Highway, Cazenovia, WI 53924.
Village of Lone Rock	Village Hall, 314 East Forest Street, Lone Rock, WI 53556.
Village of Viola	Village Hall, 106 West Wisconsin Street, Viola, WI 54664.
Village of Yuba	Village Hall, 22099 Main Street, Yuba, WI 54634.
Sauk County, Wisconsin, and Incorporated Areas	
Unincorporated Areas of Sauk County	West Square Building, 505 Broadway, Baraboo, WI 53913.
Village of Prairie Du Sac	Village Hall, 335 Galena Street, Prairie du Sac, WI 53578.
Village of Sauk City	Village Hall, 726 Water Street, Sauk City, WI 53583.
Village of Spring Green	Village Hall, 154 North Lexington Street, Spring Green, WI 53588.

II. Non-Watershed-based studies:

Community	Community map repository address
Marion County, Indiana (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Beech Grove	City Hall, 806 Main Street, Beech Grove, IN 46107.
City of Indianapolis	City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225.

Community	Community map repository address
City of Lawrence	City Hall, 9001 East 59th Street, Lawrence, IN 46216.
Town of Speedway	Town Hall, 1450 North Lynhurst Drive, Speedway, IN 46224.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18277 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of September 3, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.* The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

I. Non-Watershed-Based Studies

Community	Community map repository address
Houston County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1325	
City of Ashford	City Hall, 525 North Broadway Street, Ashford, AL 36312.
City of Dothan	City Hall, 126 North Saint Andrews Street, Dothan, AL 36303.
Town of Avon	Avon Town Hall, 732 Broadway Avenue, Ashford, AL 36312.
Town of Columbia	Town Hall, 203 South Washington Street, Columbia, AL 36319.
Town of Cottonwood	Town Hall, 1414 Metcalf Street, Cottonwood, AL 36320.
Town of Cowarts	Town Hall, 800 Jester Street, Cowarts, AL 36321.
Town of Gordon	Town Hall, 692 Tifton Road, Gordon, AL 36343.
Town of Kinsey	Town Hall, 6947 Walden Drive, Kinsey, AL 36303.
Town of Madrid	Town Hall, 764 Decatur Road, Madrid, AL 36320.
Town of Rehobeth	Town Hall, 5449 County Road 203, Rehobeth, AL 36301.
Town of Taylor	Town Hall, 1469 South County Road 59, Taylor, AL 36301.
Unincorporated Areas of Houston County	Houston County Engineer's Office, 2400 Columbia Highway, Dothan, AL 36303.
Atchison County, Kansas, and Incorporated Areas Docket No.: FEMA–B–1334	
City of Atchison	City Hall, 515 Kansas Avenue, Atchison, KS 66002.
City of Huron	City Hall, 206 South 3rd Street, Huron, KS 66041.
City of Muscotah	City Hall, 604 Kansas Avenue, Atchison, KS 66058.

Community	Community map repository address
Unincorporated Areas of Atchison County	Atchison County Courthouse, 423 North 5th Street, Atchison, KS 66002.
Gregg County, Texas, and Incorporated Areas Docket No.: FEMA–B–1247	
City of Clarksville City	City Hall, 631 U.S. Highway 80 and White Street, Clarksville City, TX 75693.
City of Easton	Easton City Hall, 185 Kennedy Boulevard, Longview, TX 75603.
City of Gladewater	City Hall, 519 East Broadway, Gladewater, TX 75647.
City of Kilgore	City Hall, 815 North Kilgore Street, Kilgore, TX 75662.
City of Lakeport	Lakeport City Hall, 207 Milam Road, Longview, TX 75603.
City of Longview	Development Services and Engineering Department, 410 South High Street, Longview, TX 75601.
City of Warren City	Warren City, City Hall, 3004 George Richey Road, Gladewater, TX 75647.
City of White Oak	City Hall, 906 South White Oak Road, White Oak, TX 75693.
Unincorporated Areas of Gregg County	Gregg County Courthouse, 101 East Methvin, Longview, TX 75601.
Harrison County, Texas, and Incorporated Areas Docket No.: FEMA–B–1250	
City of Hallsville	City Hall, 115 West Main Street, Hallsville, TX 75650.
City of Longview	Development Services and Engineering Department, 410 South High Street, Longview, TX 75601.
City of Marshall	City Hall, 401 South Alamo Street, Marshall, TX 75670.
City of Uncertain	City Hall, 199 Cypress Drive, Uncertain, TX 75661.
City of Waskom	City Hall, 430 West Texas Avenue, Waskom, TX 75692.
Town of Scottsville	Scottsville Town Hall, 177 Green Street, Marshall, TX 75672.
Unincorporated Areas of Harrison County	Harrison County Environmental Health Department, Road and Bridge Building, 3800 Five Notch Road, Marshall, TX 75670.
Walworth County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–1329	
City of Whitewater	City Hall, 312 West Whitewater Street, Whitewater, WI 53190.
Unincorporated Areas of Walworth County	Office of Emergency Management, 1770 County Road NN, Elkhorn, WI 53121.
Village of Darien	Village Hall, 20 North Wisconsin Avenue, Darien, WI 53114.

II. Watershed-Based Studies

UPPER ALABAMA WATERSHED

Community	Community Map Repository Address
Autauaga County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1325	
City of Millbrook	City Hall, 3390 Main Street, Millbrook, AL 36054.
City of Prattville	Planning Department, 102 West Main Street, Prattville, AL 36067.
Town of Autaugaville	Autauga County Emergency Management Agency, 826 Gillespie Street, Prattville, AL 36067.
Town of Billingsley	Autauga County Emergency Management Agency, 826 Gillespie Street, Prattville, AL 36067.
Unincorporated Areas of Autauga County	Autauga County Emergency Management Agency, 826 Gillespie Street, Prattville, AL 36067.
Dallas County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1325	
City of Selma	City Hall, 222 Broad Street, Selma, AL 36701.
City of Valley Grande	City Hall, 5914 Alabama Highway 22, Valley Grande, AL 36701.
Unincorporated Areas of Dallas County	Dallas County Courthouse, 105 Lauderdale Street, Selma, AL 36701.
Elmore County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1325	
City of Millbrook	City Hall, 3390 Main Street, Millbrook, AL 36054.
City of Prattville	Planning Department, 102 West Main Street, Prattville, AL 36067.
City of Wetumpka	City Hall, 408 South Main Street, Wetumpka, AL 36092.
Town of Coosada	Town Hall, 5800 Coosada Road, Coosada, AL 36020.

UPPER ALABAMA WATERSHED—Continued

Community	Community Map Repository Address
Town of Deatsville	City Hall, 408 South Main Street, Wetumpka, AL 36092.
Town of Elmore	Town Hall, 485 Jackson Street, Elmore, AL 36025.
Unincorporated Areas of Elmore County	Elmore County Highway Department, 155 County Shop Road, Wetumpka, AL 36092.

Lowndes County, Alabama, and Incorporated Areas
Docket No.: FEMA–B–1325

Town of Benton	Town Hall, 379 Washington Street, Benton, AL 36785.
Town of White Hall	Town Hall, 989 Freedom Road, Lowndesboro, AL 36752.
Unincorporated Areas of Lowndes County	Lowndes County Courthouse, 1 South Washington Street, Hayneville, AL 36040.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18240 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of August 18, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov*.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

Community	Community map repository address
Riverside County, California, and Incorporated Areas **Docket No.: FEMA–B–1330**	
City of Beaumont	Civic and Community Center, 550 East 6th Street, Beaumont, CA 92223.
City of Menifee	Public Works-Engineering Department, 29714 Haun Road, Menifee, CA 92586.
City of Perris	Engineering Department, 170 Wilkerson Avenue, Perris, CA 92570.
Unincorporated Areas of Riverside County	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92502.

Community	Community map repository address
Broward County, Florida, and Incorporated Areas Docket No.: FEMA–B–1276	
City of Coconut Creek	City Hall, 4800 West Copans Road, Coconut Creek, FL 33063.
City of Cooper City	City Hall, 9090 Southwest 50th Place, Cooper City, FL 33328.
City of Coral Springs	Building Department, 9530 West Sample Road, Coral Springs, FL 33065.
City of Dania Beach	City Hall, 100 West Dania Beach Boulevard, Dania Beach, FL 33004.
City of Deerfield Beach	Environmental Services—Engineering, 200 Goolsby Boulevard, Deerfield Beach, FL 33442.
City of Fort Lauderdale	City Hall, 100 North Andrews Avenue, Fort Lauderdale, FL 33301.
City of Hallandale Beach	City Hall, 400 South Federal Highway, Hallandale Beach, FL 33009.
City of Hollywood	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33020.
City of Lauderdale Lakes	City Hall, 4300 Northwest 36th Street, Lauderdale Lakes, FL 33319.
City of Lauderhill	City Hall, 5581 West Oakland Park Boulevard, Lauderhill, FL 33313.
City of Lighthouse Point	City Hall, 2200 Northeast 38th Street, Lighthouse Point, FL 33064.
City of Margate	Department of Environmental and Engineering Services, 901 Northwest 66th Avenue, Suite A, Margate, FL 33063.
City of Miramar	City Hall, 2300 Civic Center Place, Miramar, FL 33025.
City of North Lauderdale	City Hall, 701 Southwest 71st Avenue, North Lauderdale, FL 33068.
City of Oakland Park	Engineering and Community Development Department, 5399 North Dixie Highway, Suite 3, Oakland Park, FL 33334.
City of Parkland	City Hall, 6600 University Drive, Parkland, FL 33067.
City of Pembroke Pines	City Hall, 10100 Pines Boulevard, Pembroke Pines, FL 33026.
City of Plantation	City Hall, 400 Northwest 73rd Avenue, Plantation, FL 33317.
City of Pompano Beach	City Hall, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.
City of Sunrise	City Hall, 10770 West Oakland Park Boulevard, Sunrise, FL 33351.
City of Tamarac	City Hall, 7525 Northwest 88th Avenue, Tamarac, FL 33321.
City of West Park	City Hall, 1965 South State Route 7, West Park, FL 33023.
City of Weston	City Hall, 17200 Royal Palm Boulevard, Weston, FL 33326.
City of Wilton Manors	City Hall, 2020 Wilton Drive, Wilton Manors, FL 33305.
Seminole Tribe of Florida	6300 Stirling Road, Hollywood, FL 33024.
Town of Davie	Town Hall, 6591 Orange Drive, Davie, FL 33314.
Town of Hillsboro Beach	Town Hall, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.
Town of Lauderdale-By-The-Sea	Town Hall, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.
Town of Pembroke Park	Town Hall, 3150 Southwest 52nd Avenue, Pembroke Park, FL 33023.
Town of Southwest Ranches	Town Hall, 13400 Griffin Road, Southwest Ranches, FL 33330.
Unincorporated Areas of Broward County	Broward County Administration Office, 115 South Andrews Avenue, Room 409, Fort Lauderdale, FL 33301.
Village of Lazy Lake	Village Hall, 2250 Lazy Lane, Lazy Lake, FL 33305.
Village of Sea Ranch Lakes	Village Hall, 1 Gatehouse Road, Sea Ranch Lakes, FL 33308.
Broadwater County, Montana, and Incorporated Areas Docket No.: FEMA–B–1281	
City of Townsend	110 Broadway Street, Townsend, MT 59644.
Unincorporated Areas of Broadwater County	Broadwater County Treasurer, 515 Broadway Street, Townsend, MT 59644.
Greenville County, South Carolina, and Incorporated Areas Docket No.: FEMA–B–1238	
City of Greenville	City Hall, 206 South Main Street, Greenville, SC 29602.
City of Greer	City Hall, 106 South Main Street, Greer, SC 29650.
City of Mauldin	City Hall, 5 East Butler Road, Mauldin, SC 29662.
City of Simpsonville	City Hall, 118 North Main Street, Simpsonville, SC 29681.
City of Travelers Rest	City Hall, 6711 State Park Road, Travelers Rest, SC 29690.
Town of Fountain Inn	Town Hall, 200 North Main Street , Fountain Inn, SC 29644.
Unincorporated Areas of Greenville County	Greenville County Codes Department, 301 University Ridge, Suite 4100, Greenville, SC 29601.
Travis County, Texas, and Incorporated Areas Docket No.: FEMA–B–1272	
City of Austin	Watershed Engineering Division, 1 Texas Center, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.
City of Manor	City Hall, 201 East Parsons Street, Manor, TX 78653.
City of Pflugerville	Development Services Center, 201–B East Pecan Street, Pflugerville, TX 78660.
City of Round Rock	Transportation Department, 2008 Enterprise Drive, Round Rock, TX 78664.
Unincorporated Areas of, Travis County	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.

Community	Community map repository address
Rockingham County, Virginia, and Incorporated Areas Docket No.: FEMA–B–1284	
Town of Bridgewater	Town Hall, 201 Green Street, Bridgewater, VA 22812.
Unincorporated Areas of Rockingham County	Rockingham County Administration Center, 20 East Gay Street, Harrisonburg, VA 22802.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18229 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1429]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 30, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1429, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Otero County, New Mexico, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Unincorporated Areas of Otero County	Otero County Administration Building, 1101 New York Avenue, Room 105, Alamogordo, NM 88310.
Village of Tularosa	Otero County Administration Building, 1101 New York Avenue, Room 105, Alamogordo, NM 88310.
Greene County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Borough of Carmichaels	Borough Building, 100 West George Street, Carmichaels, PA 15320.
Borough of Clarksville	Borough Office, 300 Factory Street, Clarksville, PA 15322.
Borough of Greensboro	Borough Office, 405 Front Street, Greensboro, PA 15338.
Borough of Rices Landing	Borough Municipal Building, 137 Main Street, Rices Landing, PA 15357.
Borough of Waynesburg	Borough Office, 90 East High Street, Waynesburg, PA 15370.
Township of Aleppo	Aleppo Township Municipal Building, 815 Aleppo Road, New Freeport, PA 15352.
Township of Center	Center Township Municipal Building, 100 Municipal Drive, Rogersville, PA 15359.
Township of Cumberland	Cumberland Township Municipal Building, 100 Municipal Road, Carmichaels, PA 15320.
Township of Dunkard	Dunkard Township Office, 370 North Moreland Street, Bobtown, PA 15315.
Township of Franklin	Franklin Township Municipal Building, 568 Rolling Meadows Road, Waynesburg, PA 15370.
Township of Freeport	Freeport Township Office, 773 Golden Oaks Road, New Freeport, PA 15352.
Township of Gilmore	Gilmore Township Municipal Building, 181 Hero Road, New Freeport, PA 15352.
Township of Gray	Gray Township Municipal Building, 201 Stringtown Road, Graysville, PA 15337.
Township of Greene	Greene Township Office, 243 Garards Ford Road, Garards Fort, PA 15334.
Township of Jackson	Jackson Township Building, 104 Tunnel Road, Holbrook, PA 15341.
Township of Jefferson	Jefferson Township Municipal Building, 173 Goslin Road, Rices Landing, PA 15357.
Township of Monongahela	Monongahela Township Office Building, 128 Maple Ridge Road, Greensboro, PA 15338.
Township of Morgan	Morgan Township Municipal Building, 1019 3rd Street Extension, Mather, PA 15346.
Township of Morris	Morris Township Municipal Building, 1317 Browns Creek Road, Sycamore, PA 15364.
Township of Perry	Perry Township Municipal Building, 799 Big Shannon Run Road, Mount Morris, PA 15349.
Township of Richhill	Richhill Township Municipal Building, 109 Municipal Lane, Wind Ridge, PA 15380.
Township of Springhill	Springhill Township Municipal Building, 268 Windy Gap Road, Aleppo, PA 15310.
Township of Washington	Washington Township Municipal Office, 112 Municipal Lane, Prosperity, PA 15329.
Township of Wayne	Wayne Township Municipal Building, 132 Spraggs Road, Spraggs, PA 15362.
Township of Whiteley	Whiteley Township Municipal Building, 1426 Kirby Road, Waynesburg, PA 15370.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18273 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1427]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 30, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1427, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Weld County, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Dacono	City Hall, 512 Cherry Street, Dacono, CO 80514.
City of Evans	City Hall, 110 37th Street, Evans, CO 80620.
City of Fort Lupton	City Hall, 130 South McKinley Avenue, Fort Lupton, CO 80621.
City of Greeley	City Hall, 1000 10th Street, Greeley, CO 80631.
Town of Ault	Town Hall, 201 1st Street, Ault, CO 80610.
Town of Eaton	Town Hall, 223 1st Street, Eaton, CO 80615.
Town of Firestone	Town Hall, 151 Grant Avenue, Firestone, CO 80520.
Town of Frederick	Town Hall, 401 Locust Street, Frederick, CO 80530.
Town of Gilcrest	Town Hall, 304 8th Street, Gilcrest, CO 80623.
Town of Hudson	Town Hall, 557 Ash Street, Hudson, CO 80642.
Town of Keenesburg	Town Hall, 140 South Main Street, Keenesburg, CO 80643.
Town of La Salle	Town Hall, 128 North 2nd Street, La Salle, CO 80645.
Town of Mead	Town Hall, 441 3rd Street, Mead, CO 80542.

Community	Community map repository address
Town of Milliken	Town Hall, 1101 Broad Street, Milliken, CO 80543.
Town of Nunn	Town Hall, 185 Lincoln Avenue, Nunn, CO 80648.
Town of Pierce	Town Hall, 240 Main Street, Pierce, CO 80650.
Town of Platteville	Town Hall, 400 Grand Avenue, Platteville, CO 80651.
Town of Severance	Town Hall, 231 West 4th Avenue, Severance, CO 80546.
Town of Windsor	Town Hall, 301 Walnut Street, Windsor, CO 80550.
Unincorporated Areas of Weld County	County Commissioner's Office, 915 10th Street, Greeley, CO 80632.
Bullitt County, Kentucky, and Incorporated Areas	
Maps Available for Inspection Online at: *www.fema.gov/preliminaryfloodhazarddata*	
City of Fox Chase	149 North Walnut Street, 3rd Floor, Shepherdsville, KY 40165.
City of Hebron Estates	3407 Burkland Boulevard, Shepherdsville, KY 40165.
City of Hillview	283 Crestwood Lane, Louisville, KY 40229.
City of Lebanon Junction	271 Main Street, Lebanon Junction, KY 40150.
City of Mount Washington	275 Snapp Street, Mount Washington, KY 40047.
City of Shepherdsville	634 Conestoga Parkway, Shepherdsville, KY 40165.
Unincorporated Areas of Bullitt County	149 North Walnut Street, 3rd Floor, Shepherdsville, KY 40165.
Mercer County, North Dakota, and Incorporated Areas	
Maps Available for Inspection Online at: *www.fema.gov/preliminaryfloodhazarddata*	
City of Beulah	Beulah City Hall, 120 Central Avenue North, Beulah, ND 58523.
City of Golden Valley	City Hall, 110 1st Avenue SW., Golden Valley, ND 58541.
City of Hazen	City Planner, 146 Main Street East, Hazen, ND 58545.
City of Stanton	City Hall, 109 Harmon Avenue, Stanton, ND 58571.
City of Zap	Auditor, City of Zap, 121 Main Street, Zap, ND 58580.
Three Affiliated Tribes of the Fort Berthold Reservation	Three Affiliated Tribes of Fort Berthold, 404 Frontage Road, New Town, ND 58763.
Unincorporated Areas of Mercer County	Department of Emergency Services, 1021 Arthur Street, Stanton, ND 58571.
Morton County, North Dakota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Hebron	City Hall, 620 Washington Avenue, Hebron, ND 58638.
City of Mandan	City Hall, 205 2nd Avenue NW., Mandan, ND 58554.
Unincorporated Areas of Morton County	Morton County Courthouse, 210 2nd Avenue NW., Mandan, ND 58554.
Teton County, Wyoming, and Incorporated Areas	
Maps Available for Inspection Online at: *www.fema.gov/preliminaryfloodhazarddata*	
Unincorporated Areas of Teton County	Teton County Engineering Office, 320 South King Street, Jackson, WY 83001.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18275 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of August 4, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new

or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

Community	Community map repository address
Harvey County, Kansas, and Incorporated Areas Docket No.: FEMA–B–1329	
City of Halstead	City Hall, 303 Main Street, Halstead, KS 67056.
City of Sedgwick	City Hall, 511 North Commercial Avenue, Sedgwick, KS 67135.
Unincorporated Areas of Harvey County	Harvey County Courthouse, 800 North Main Street, Newton, KS 67114.
Burleigh County, North Dakota, and Incorporated Areas Docket No.: FEMA–B–1283	
City of Bismarck	221 North Fifth Street, Bismarck, ND 58501.
City of Lincoln	74 Santee Road, Lincoln, ND 58504.
Unincorporated Areas of Burleigh County	Burleigh County Commission, 221 North Fifth Street, Bismarck, ND 58501.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18227 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of September 26, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone

areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov*.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

Community	Community map repository address
San Bernardino, California, and Incorporated Areas Docket No.: FEMA–B–1309	
City of Fontana	City Hall, Engineering Department, 8353 Sierra Avenue, Fontana, CA 92335.
City of Ontario	City Hall, Engineering Department Public Counter, 303 East B Street, Ontario, CA 91764.
City of Rancho Cucamonga	City Hall, Engineering Department Plaza Level, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730.
Unincorporated Areas of San Bernardino County	Public Works Department, Water Resources Department, 825 East 3rd Street, San Bernardino, CA 92415.
Ventura County, California, and Incorporated Areas Docket No.: FEMA–B–1330	
City of Ojai	City Hall, 401 South Ventura Street, Ojai, CA 93024.
Unincorporated Areas of Ventura County	Ventura County Hall of Administration, 800 South Victoria Avenue, Ventura, CA 93009.
Citrus County, Florida, and Incorporated Areas Docket No.: FEMA–B–1347	
City of Crystal River	City Hall, 123 North West U.S. Highway 19, Crystal River, FL 34428.
City of Inverness	City Hall, 212 West Main Street, Inverness, FL 34450.
Unincorporated Areas of Citrus County	Lecanto Government Complex, 3600 West Sovereign Path, Lecanto, FL 34461.
Glades County, Florida, and Incorporated Areas Docket No.: FEMA–B–1347	
City of Moore Haven	299 Riverside Drive, Moore Haven, FL 33471.
Unincorporated Areas of Glades County	500 Avenue J, Moore Haven, FL 33471.
Pasco County, Florida, and Incorporated Areas Docket No.: FEMA–B–1347	
City of Dade City	City Hall, 14206 U.S. Highway 98 Bypass, Dade City, FL 33523.
City of New Port Richey	City Hall, 5919 Main Street, New Port Richey, FL 34652.
City of Port Richey	City Hall, 6333 Ridge Road, Port Richey, FL 34668.
City of San Antonio	City Hall, 32819 Pennsylvania Avenue, San Antonio, FL 33576.
City of Zephyrhills	City Hall, 5335 8th Street, Zephyrhills, FL 33542.
Town of St. Leo	Town Hall, 34544 State Road 52, Saint Leo, FL 33574.
Unincorporated Areas of Pasco County	New Port Richey Government Center, 7530 Little Road, New Port Richey, FL 34654.
Wakulla County, Florida, and Incorporated Areas Docket No.: FEMA–B–1267	
City of Sopchoppy	City Hall, 105 Municipal Avenue, Sopchoppy, FL 32358.
City of St. Marks	City Hall, 788 Port Leon Drive, Saint Marks, FL 32355.
Unincorporated Areas of Wakulla County	Wakulla County Planning and Zoning Department, 3095 Crawfordville Highway, Crawfordville, FL 32327.
Greenup County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1347	
City of Bellefonte	Bellefonte City Hall, 705 Bellefonte Princess Road, Ashland, KY 41101.
City of Greenup	City Hall, 1005 Walnut Street, Greenup, KY 41144.
City of Raceland	City Hall, 711 Chinn Street, Raceland, KY 41169.
City of Russell	City Hall, 410 Ferry Street, Russell, KY 41169.
City of South Shore	City Hall, 69 Narco Drive, South Shore, KY 41175.
City of Worthington	City Hall, 512 Ferry Street, Worthington, KY 41183.
City of Wurtland	City Hall, 500 Wurtland Avenue, Wurtland, KY 41144.
Unincorporated Areas of Greenup County	Greenup County Courthouse, 301 Main Street, Room 102, Greenup, KY 41144.

Community	Community map repository address
Allegheny County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1299	
Borough of Aspinwall	Borough Office, 217 Commercial Avenue, Aspinwall, PA 15215.
Borough of Avalon	Borough Hall, 640 California Avenue, Avalon, PA 15202.
Borough of Baldwin	Baldwin Borough Municipal Building, 3344 Churchview Avenue, Pittsburgh, PA 15227.
Borough of Bell Acres	Bell Acres Borough Building, 1153 Camp Meeting Road, Sewickley, PA 15143.
Borough of Bellevue	Borough Hall, 537 Bayne Avenue, Bellevue, PA 15202.
Borough of Ben Avon	Ben Avon Borough Building, 7101 Church Avenue, Pittsburgh, PA 15202.
Borough of Blawnox	Blawnox Borough Office, 376 Freeport Road, Pittsburgh, PA 15238.
Borough of Brackenridge	Borough Office, 1000 Brackenridge Avenue, Brackenridge, PA 15014.
Borough of Braddock	Borough Municipal Building, 415 6th Street, Braddock, PA 15104.
Borough of Braddock Hills	Braddock Hills Borough Building, 1300 Brinton Road, Pittsburgh, PA 15221.
Borough of Bradford Woods	Borough Office, 4908 Wexford Run Road, Bradford Woods, PA 15015.
Borough of Brentwood	Brentwood Borough Municipal Building, 3624 Brownsville Road, Pittsburgh, PA 15227.
Borough of Bridgeville	Borough Municipal Building, 425 Bower Hill Road, Bridgeville, PA 15017.
Borough of Carnegie	Borough Building, 1 Veterans Way, Carnegie, PA 15106.
Borough of Castle Shannon	Castle Shannon Borough Building, 3310 McRoberts Road, Pittsburgh, PA 15234.
Borough of Cheswick	Borough Office, 220 South Atlantic Avenue, Cheswick, PA 15024.
Borough of Churchill	Churchill Borough Municipal Building, 2300 William Penn Highway, Pittsburgh, PA 15235.
Borough of Coraopolis	Borough Hall, 1012 5th Avenue, Coraopolis, PA 15108.
Borough of Crafton	Crafton Borough Hall, 100 Stotz Avenue, Pittsburgh, PA 15205.
Borough of Dravosburg	Borough Building, 226 Maple Avenue, Dravosburg, PA 15034.
Borough of East Pittsburgh	Borough Office, 813 Linden Avenue, East Pittsburgh, PA 15112.
Borough of Edgeworth	Borough Building, 301 Beaver Road, Edgeworth, PA 15143.
Borough of Elizabeth	Borough Hall, 206 3rd Avenue, Elizabeth, PA 15037.
Borough of Emsworth	Emsworth Borough Office, 171 Center Avenue, Pittsburgh, PA 15202.
Borough of Etna	Etna Borough Office, 437 Butler Street, Pittsburgh, PA 15223.
Borough of Forest Hills	Forest Hills Borough Building, 2071 Ardmore Boulevard, Pittsburgh, PA 15221.
Borough of Fox Chapel	Fox Chapel Borough Building, 401 Fox Chapel Road, Pittsburgh, PA 15238.
Borough of Franklin Park	Franklin Park Zoning Office, 2344 West Ingomar Road, Pittsburgh, PA 15237.
Borough of Glassport	Borough Secretary's Office, 440 Monongahela Avenue, Glassport, PA 15045.
Borough of Glen Osborne	Borough of Glen Osborne, Sewickley Borough Building, 601 Thorn Street, Sewickley, PA 15143.
Borough of Glenfield	Glenfield Borough Secretary's Office, 299 Dawson Avenue, Sewickley, PA 15143.
Borough of Green Tree	Green Tree Borough Building, 10 West Manilla Avenue, Pittsburgh, PA 15220.
Borough of Haysville	Haysville Borough Secretary's Office, 18 River Road, Sewickley, PA 15143.
Borough of Heidelberg	Borough Building, 1631 East Railroad Street, Heidelberg, PA 15106.
Borough of Homestead	Borough Office, 221 East 7th Avenue, Homestead, PA 15120.
Borough of Jefferson Hills	Borough Municipal Center, 925 Old Clairton Road, Jefferson Hills, PA 15025.
Borough of Leetsdale	Borough Building, 373 Beaver Street, Suite A, Leetsdale, PA 15056.
Borough of Liberty	Liberty Borough Municipal Building, 2921 Liberty Way, McKeesport, PA 15133.
Borough of Lincoln	Lincoln Borough Municipal Building, 45 Abe's Way, Elizabeth, PA 15037.
Borough of McDonald	Borough Building, 151 School Street, McDonald, PA 15057.
Borough of McKees Rocks	Borough Building, 340 Bell Avenue, McKees Rocks, PA 15136.
Borough of Millvale	Borough Hall, 501 Lincoln Avenue, Millvale, PA 15209.
Borough of Munhall	Borough Hall, 1900 West Street, Munhall, PA 15120.
Borough of North Braddock	Borough Hall, 600 Anderson Street, North Braddock, PA 15104.
Borough of Oakdale	Borough Building, 6115 Noblestown Road, Oakdale, PA 15071.
Borough of Oakmont	Borough Municipal Building, 767 5th Street, Oakmont, PA 15139.
Borough of Pitcairn	Borough Building, 582 6th Street, Pitcairn, PA 15140.
Borough of Pleasant Hills	Pleasant Hills Borough Office, 410 East Bruceton Road, Pittsburgh, PA 15236.
Borough of Plum	Plum Borough Planning and Zoning Office, 4575 New Texas Road, Pittsburgh, PA 15239.
Borough of Port Vue	Borough Hall, 1191 Romine Avenue, Port Vue, PA 15133.

Community	Community map repository address
Borough of Rankin	Borough Hall, 320 Hawkins Avenue, Rankin, PA 15104.
Borough of Rosslyn Farms	Borough of Rosslyn Farms, Gateway Engineers, 400 Holiday Drive, Suite 300, Pittsburgh, PA 15220.
Borough of Sewickley	Borough Building, 601 Thorn Street, Sewickley, PA 15143.
Borough of Sewickley Heights	Sewickley Heights Borough Hall, 238 Country Club Road, Sewickley, PA 15143.
Borough of Sewickley Hills	Sewickley Hills Borough Municipal Building, 349 Magee Road, Sewickley, PA 15143.
Borough of Sharpsburg	Sharpsburg Borough Office, 1611 Main Street, Pittsburgh, PA 15215.
Borough of Springdale	Borough Municipal Building, 325 School Street, Springdale, PA 15144.
Borough of Swissvale	Borough Hall, 7560 Roslyn Street, Swissvale, PA 15218.
Borough of Tarentum	Borough Municipal Building, 318 2nd Avenue, Tarentum, PA 15084.
Borough of Thornburg	Thornburg Borough Secretary's Office, 545 Hamilton Road, Pittsburgh, PA 15205.
Borough of Trafford	Borough Hall, 414 Brinton Avenue, Trafford, PA 15085.
Borough of Turtle Creek	Borough Building, 125 Monroeville Avenue, Turtle Creek, PA 15145.
Borough of Verona	Borough Municipal Building, 736 East Railroad Avenue, Verona, PA 15147.
Borough of Versailles	Versailles Borough Building, 5100 Walnut Street, McKeesport, PA 15132.
Borough of Wall	Borough Engineer's Office, 413 Wall Avenue, Wall, PA 15148.
Borough of West Elizabeth	Borough Building, 800 4th Street, West Elizabeth, PA 15088.
Borough of West Homestead	Borough Building, 456 West 8th Avenue, West Homestead, PA 15120.
Borough of West Mifflin	Borough Building, 3000 Lebanon Church Road, West Mifflin, PA 15122.
Borough of West View	West View Borough Building, 441 Perry Highway, Pittsburgh, PA 15229.
Borough of Whitaker	Whitaker Borough Secretary's Office, 1001 Ardmore Boulevard, Suite 100, Pittsburgh, PA 15221.
Borough of White Oak	Borough Municipal Building, 2280 Lincoln Way, White Oak, PA 15131.
Borough of Whitehall	Whitehall Borough Complex, 100 Borough Park Drive, Pittsburgh, PA 15236.
Borough of Wilmerding	Borough Building, 301 Station Street, Wilmerding, PA 15148.
City of Clairton	City Engineer's Office, 551 Ravensburg Boulevard, Clairton, PA 15025.
City of Duquesne	City Building Inspector's Office, 12 South 2nd Street, Duquesne, PA 15110.
City of McKeesport	City Hall, 500 5th Avenue, McKeesport, PA 15132.
City of Pittsburgh	Department of City Planning, 200 Ross Street, 4th Floor, Pittsburgh, PA 15219.
Municipality of Bethel Park	Municipal Building, 5100 West Library Avenue, Bethel Park, PA 15102.
Municipality of Monroeville	Municipal Engineering Office, 2700 Monroeville Boulevard, Monroeville, PA 15146.
Municipality of Mt. Lebanon	Mt. Lebanon Municipal Building, 710 Washington Road, Pittsburgh, PA 15228.
Municipality of Penn Hills	Municipal Planning Department, 12245 Frankstown Road, Penn Hills, PA 15235.
Town of McCandless	McCandless Town Hall, 9955 Grubbs Road, Wexford, PA 15090.
Township of Aleppo	Aleppo Township Building, 100 North Drive, Sewickley, PA 15143.
Township of Baldwin	Baldwin Township Municipal Building, 10 Community Park Drive, Pittsburgh, PA 15234.
Township of Collier	Collier Township Zoning Office, 2418 Hilltop Road, Suite 100, Presto, PA 15142.
Township of Crescent	Township Municipal Building, 225 Spring Run Road, Crescent, PA 15046.
Township of East Deer	East Deer Township Municipal Building, 927 Freeport Road, Creighton, PA 15030.
Township of Elizabeth	Township Municipal Building, 522 Rock Run Road, Elizabeth, PA 15037.
Township of Fawn	Fawn Township Office, 3054 Howes Run Road, Tarentum, PA 15084.
Township of Findlay	Findlay Township Building, 1271 Route 30, Clinton, PA 15026.
Township of Forward	Forward Township Municipal Building, 1000 Golden Circle, Elizabeth, PA 15037.
Township of Frazer	Frazer Township Hall, 592 Pittsburgh Mills Circle, Tarentum, PA 15084.
Township of Hampton	Hampton Township Municipal Building, 3101 McCully Road, Allison Park, PA 15101.
Township of Harmar	Harmar Township Municipal Building, 701 Freeport Road, Cheswick, PA 15024.
Township of Harrison	Harrison Township Municipal Building, 1 Municipal Drive, Natrona Heights, PA 15065.
Township of Indiana	Indiana Township Hall, 3710 Saxonburg Boulevard, Pittsburgh, PA 15238.
Township of Kennedy	Kennedy Township Municipal Building, 340 Forest Grove Road, Coraopolis, PA 15108.

Community	Community map repository address
Township of Kilbuck	Kilbuck Township Hall, 640 California Avenue, Pittsburgh, PA 15202.
Township of Leet	Leet Township Building, 198 Ambridge Avenue, Fair Oaks, PA 15003.
Township of Marshall	Marshall Township Municipal Building, 525 Pleasant Hill Road, Suite 100, Wexford, PA 15090.
Township of Moon	Township Office, 1000 Beaver Grade Road, Moon Township, PA 15108.
Township of Neville	Neville Township Municipal Building, 5050 Grand Avenue, Pittsburgh, PA 15225.
Township of North Fayette	North Fayette Township Building, 400 North Branch Road, Oakdale, PA 15071.
Township of North Versailles	Township Administrative Office, 1401 Greensburg Avenue, North Versailles, PA 15137.
Township of O'Hara	O'Hara Township Office, 325 Fox Chapel Road, Pittsburgh, PA 15238.
Township of Ohio	Ohio Township Building, 1719 Roosevelt Road, Pittsburgh, PA 15237.
Township of Pine	Pine Township Municipal Building, 230 Pearce Mill Road, Wexford, PA 15090.
Township of Reserve	Reserve Township Hall, 33 Lonsdale Street, Pittsburgh, PA 15212.
Township of Richland	Richland Township Building, 4019 Dickey Road, Gibsonia, PA 15044.
Township of Robinson	Robinson Township Building, 1000 Church Hill Road, Pittsburgh, PA 15205.
Township of Ross	Ross Township Hall, 1000 Ross Municipal Drive, Pittsburgh, PA 15237.
Township of Scott	Scott Township Office, 301 Lindsay Road, Carnegie, PA 15106.
Township of Shaler	Shaler Township Hall, 300 Wetzel Road, Glenshaw, PA 15116.
Township of South Fayette	South Fayette Township Municipal Building, 515 Millers Run Road, Morgan, PA 15064.
Township of South Park	Township Code Enforcement Office, 2675 Brownsville Road, South Park, PA 15129.
Township of South Versailles	Township of South Versailles, Coulter Volunteer Fire Company, 414 Railroad Street, Coulter, PA 15028.
Township of Springdale	Springdale Township Hall, 100 Plate Drive, Harwick, PA 15049.
Township of Stowe	Stowe Township Building, 555 Broadway Avenue, McKees Rocks, PA 15136.
Township of Upper St. Clair	Township Municipal Building, 1820 McLaughlin Run Road, Upper St. Clair, PA 15241.
Township of West Deer	West Deer Township Building, 109 East Union Road, Cheswick, PA 15024.
Township of Wilkins	Wilkins Township Building, 110 Peffer Road, Turtle Creek, PA 15145.
Refugio County, Texas, and Incorporated Areas Docket No.: FEMA–B–1332	
City of Austwell	City Hall, 108 South Gisler Street, Austwell, TX 77950.
City of Bayside	City Hall, 909 1st Street, Bayside, TX 78340.
Town of Refugio	Town Hall, 613 Commerce Street, Refugio, TX 78377.
Town of Woodsboro	Town Hall, 121 North Wood Avenue, Woodsboro, TX 78393.
Unincorporated Areas of Refugio County	Refugio County Courthouse, 808 Commerce Street, Refugio, TX 78377.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18252 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of September 17, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new

or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Adminstrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

Community	Community map repository address
Pike County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1292	
City of Petersburg	City Hall, 704 East Main Street, Petersburg, IN 47567.
Town of Winslow	Town Hall, 301 North Main Street, Winslow, IN 47598.
Unincorporated Areas of Pike County	Pike County Courthouse, 801 Main Street, Petersburg, IN 47567.
Jackson County, Texas, and Incorporated Areas Docket No.: FEMA–B–1311	
City of Edna	City Hall, 126 West Main Street, Edna, TX 77957.
City of Ganado	City Hall, 112 East Putnam, Ganado, TX 77962.
City of La Ward	Fire Station, 13041 State Highway 172, La Ward, TX 77970.
Unincorporated Areas of Jackson County	Jackson County Department of Permitting, Inspection and Floodplain Administration, 411 North Wells, Room 130, Edna, TX 77957.
Dane County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–1340	
City of Edgerton	City Hall, 12 Albion Street, Edgerton, WI 53534.
City of Madison	City Hall, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.
City of Middleton	City Hall, 7426 Hubbard Avenue, Middleton, WI 53562.
City of Stoughton	City Hall, 381 East Main Street, Stoughton, WI 53589.
City of Sun Prairie	City Hall, 300 East Main Street, Sun Prairie, WI 53590.
Unincorporated Areas of Dane County	City County Building, 210 Martin Luther King Jr. Boulevard, Room 116, Madison, WI 53703.
Village of Cambridge	Village Hall, 200 South Spring Street, Cambridge, WI 53523.
Village of Cottage Grove	Village Hall, 221 East Cottage Grove Road, Cottage Grove, WI 53527.
Village of Deerfield	Village Hall, 4 North Main Street, Deerfield, WI 53531.
Village of DeForest	Village Hall, 306 DeForest Street, DeForest, WI 53532.
Village of Marshall	Village Hall, 130 South Pardee Street, Marshall, WI 53559.
Village of McFarland	Village Hall, 5915 Milwaukee Street, McFarland, WI 53558.
Village of Oregon	Village Hall, 117 Spring Street, Oregon, WI 53575.
Village of Rockdale	Village Hall, 148 Water Street, Rockdale, WI 53523.
Village of Waunakee	Village Hall, 500 West Main Street, Waunakee, WI 53597.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18248 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1425]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports,

prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of map revision	Effective date of modification	Community No.
California: San Bernardino.	City of Chino (14–09–2136P).	The Honorable Dennis Yates, Mayor, City of Chino, 13220 Central Avenue, Chino, CA 91710.	13220 Central Avenue, Chino, CA 91710.	*http://www.msc.fema.gov/lomc*	November 3, 2014	060272
Iowa:						
Bremer	City of Waverly (13–07–0864P).	The Honorable Bob Brunkhorst, Mayor, City of Waverly, 200 First Street NE., P.O. Box 616, Waverly, IA 50677.	200 First Street NE., Waverly, IA 50677.	*http://www.msc.fema.gov/lomc*	October 24, 2014	190030
Bremer	Unincorporated Areas of Bremer County (13–07–0864P).	The Honorable Lena Fowler, Chairman, Bremer County Board of Supervisors, 415 East Bremer Avenue, Waverly, IA 50677.	415 East Bremer Avenue, Waverly, IA 50677.	*http://www.msc.fema.gov/lomc*	October 24, 2014	190847
Missouri: Jefferson.	Unincorporated Areas of Jefferson County (14–07–1157P).	Mr. Ken Walker, County Executive, Jefferson County, 729 Maple Street, Suite G30, Hillsboro, MO 63050.	Jefferson County Administration Center, 729 Maple Street, Hillsboro, MO 63050.	*http://www.msc.fema.gov/lomc*	October 24, 2014	290808
Pennsylvania: Susquehanna.	Borough of Thompson (13–03–2723P).	Mr. Mark Carmody, President of Council, Borough of Thompson, P.O. Box 89, Thompson, PA 18465.	P.O. Box 89, Thompson, PA 18465.	*http://www.msc.fema.gov/lomc*	October 30, 2014	422582

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of map revision	Effective date of modification	Community No.
Susquehanna.	Township of Thompson (13–03–2723P).	Mr. Richard Wademan, Supervisor, Township of Thompson, P.O. Box 89, Thompson, PA 18465.	P.O. Box 89, Thompson, PA 18465.	*http://www.msc.fema.gov/lomc*	October 30, 2014	422583
Wisconsin: Pierce	Unincorporated Areas of Pierce County (14–05–2976P).	Mr. Jeff Holst, Chair, Pierce County Board of Supervisors, 414 West Main Street, Ellsworth, WI 54011.	414 West Main Street, Ellsworth, WI 54011.	*http://www.msc.fema.gov/lomc*	October 23, 2014	555571

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18089 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002]

Final Flood Hazard Determinations; Correction

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Final Notice; correction.

SUMMARY: On May 15, 2014, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** a final flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 79 FR 27892. The table provided here represents the final flood hazard determinations and community affected for Robeson County, North Carolina, and Incorporated Areas.

Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the community listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in FEMA's National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of July 7, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for the community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for the community is available for inspection at the Community Map Repository address listed in the table below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the new or modified flood hazard information for the community listed. Notification of these changes has been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for the community or online through the FEMA Map Service Center at *www.msc.fema.gov*. The flood hazard determinations are made final in the watersheds and/or community listed in the table below.

Correction

In the final flood hazard determination notice published at 79 FR 27892 in the May 15, 2014, issue of the **Federal Register**, FEMA published a table titled ''Robeson County, North Carolina, and Incorporated Areas''. This table contained inaccurate information as to the community map repository for the Unincorporated Areas of Robeson County, North Carolina. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

Community	Community map repository address
Robeson County, North Carolina, and Incorporated Areas Docket No.: FEMA–B–1287	
Unincorporated Areas of Robeson County	Robeson County, 701 North Elm Street, Lumberton, NC 28359.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18090 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4181–DR; Docket ID FEMA–2014–0003]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4181–DR), dated July 14, 2014, and related determinations.

DATES: *Effective Date:* July 14, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 14, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of June 3–4, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Adams, Clarke, Decatur, Mills, Montgomery, Pottawattamie, Ringgold, Taylor, and Wayne Counties for Public Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–18246 Filed 7–31–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4180–DR; Docket ID FEMA–2014–0003

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4180–DR), dated July 8, 2014, and related determinations.

DATES: *Effective Date:* July 8, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 8, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms and flooding during the period of May 13–22, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven S. Ward, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Allegany, Cattaraugus, Chautauqua, Delaware, Herkimer, Lewis, Livingston, Ontario, Otsego, Steuben, and Yates Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–18235 Filed 7–31–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4176–DR; Docket ID FEMA–2014–0003]

Alabama; Amendment No. 6 To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Alabama (FEMA–4176–DR), dated May 2, 2014, and related determinations.

DATES: *Effective Date:* July 23, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Joe M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Albert Lewis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–18263 Filed 7–31–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1359]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On January 30, 2014, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 79 FR 4950. The table provided here represents the proposed flood hazard determinations and communities affected for Mercer County, New Jersey (All Jurisdictions).

DATES: Comments are to be submitted on or before October 30, 2014.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1359, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information

regarding the SRP process can be found online at *http://www.fema.gov/pdf/media/factsheets/2011/srp_fs.pdf.*

Correction

In the proposed flood hazard determination notice published at 79 FR 4950, the table contained inaccurate information as to the watershed or communities affected by the proposed flood hazard determinations, or the associated community map repository or web addresses also featured in the table. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Community	Community Map Repository Address
Mercer County, New Jersey (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Borough of Hightstown	Clerk's Office, 156 Bank Street, Hightstown, NJ 08520
Borough of Hopewell	Clerk's Office, 88 Broad Street, Hopewell, NJ 08525
Borough of Pennington	Borough Hall, 30 North Main Street, Pennington, NJ 08534
City of Trenton	Trenton Fire Department, 244 Perry Street, Trenton, NJ 08618
Municipality of Princeton	Office of Engineering, 400 Witherspoon Street, Princeton, NJ 08540
Township of East Windsor	Engineering Department, 16 Lanning Boulevard, East Windsor, NJ 08520
Township of Ewing	Construction Office, 2 Jake Garzio Drive, Ewing, NJ 08628
Township of Hamilton	Municipal Building, 2090 Greenwood Avenue, Room 307, Hamilton, NJ 08609
Township of Hopewell	Hopewell Township Zoning Office, 201 Washington Crossing, Pennington Road, Titusville, NJ 08560
Township of Lawrence	Engineering Office, 2207 Lawrence Road, Lawrence, NJ 08648
Township of Robbinsville	Planning and Zoning Department, 1 Washington Boulevard, Robbinsville, NJ 08691
Township of West Windsor	Community Development Department, 271 Clarksville Road, West Windsor, NJ 08550

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 11, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–18104 Filed 7–31–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other

Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street, SW., Room 300, Washington, DC 20024, (202)–720–8873; AIR FORCE: Ms. Connie Lotfi, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; ARMY: Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571)–256–8145; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street, NW., Washington, DC 20314; (202) 761–5542; ENERGY: Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave, SW., Washington, DC 20585 (202) 287–1503; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free number).

Dated: July 24, 2014.

Ann Marie Oliva,

Deputy Assistant Secretary (Acting) for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 08/01/2014

Suitable/Available Properties

Building

California

Alder Springs Multi-Function, 2212
3339 County Road 307
P.O. Box 27
Elk Creek CA 95939
Landholding Agency: Agriculture
Property Number: 15201430002
Status: Excess
Comments: 8,172 sq. ft.; good conditions; storage; 48+ years old; under a special use permit; site gated; contact Agriculture for more information

Alder Springs GYM; 2803
3339 County Road 307
Elk Creek CA 95939
Landholding Agency: Agriculture
Property Number: 15201430003
Status: Excess
Comments: 9,679 sq. ft.; 48+ years old; good conditions; under special use permit; site is gated; contact Agriculture for more information

Hunter Point Radio Vault
3306; 2401 Hunter Point Rd.
Witter Springs, CA 95493
Landholding Agency: Agriculture
Property Number: 15201430005
Status: Excess
Comments: 94 sq. ft.; 52+ years old; fair conditions; contact Agriculture for more information

Bldg. 53
Navy Lodge on RT Jones Rd.
Mountain View CA
Landholding Agency: Army
Property Number: 21201430003
Status: Excess
Comments: off-site removal only; 960 sq. ft.; storage; poor conditions; contact Army for more information

Colorado

Building 00001
Hawkinsville Space Surveillance Station
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430002
Status: Excess
Comments: 2,880 sq. ft.; 4+ months vacant; fair to good conditions; environmental conditions exist; contact Air Force for more information

Building 0001
Lake Kickapoo Space Surveillance Station
Peterson AFR CO
Landholding Agency: Air Force
Property Number: 18201430003
Status: Excess
Comments: 3,710 sq. ft.; 9+ months vacant; fair to good conditions; environmental condition exist; contact Air Force

Building 00006
Red River Space Surveillance Center
Peterson AFK CO
Landholding Agency: Air Force
Property Number: 18201430004
Status: Excess
Comments: 196 sq. ft.; 4+ months vacant; fair to good conditions; contact Air Force for more information

Building 00003
Tattnall Space Surveillance Station
Peterson AFR CO
Landholding Agency: Air Force
Property Number: 18201430005
Status: Excess
Comments: 800 sq. ft.; 4+ months vacant; good to fair conditions; contact Air Force for more information

Building 00003
Hawkinsville Space Surveillance Station
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430006
Status: Excess
Comments: 1,650 sq. ft.; 4+ months vacant; good to fair conditions; contact Air Force for more information

Lake Kickapoo Space Surveillance Station
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430007
Status: Excess
Comments: 800 sq. ft.; 4+ months vacant; repairs needed; contact Air Force for more information

Jordan Lake Space Surveillance Station
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430008
Status: Excess
Directions: Buildings 00001; 00003; 00006
Comments: Building 1: 2,565 sq. ft.; building 3: 800 sq. ft.; building 6: 156 sq. ft.; good to moderate conditions; contact Air Force for more information

Building 00006
Hawkinsville Space Surveillance Station
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430009
Status: Excess
Comments: 172 sq. ft.; repairs needed; contact Air Force for more information

4 Buildings
San Diego Space Surveillance Station
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430010
Status: Excess
Directions: Buildings 00001; 00003; 00026; 00081
Comments: Building: 1=5,002 sq. ft.; Building: 3=900 sq. ft.; Building 26=500 sq. ft.; Building 81=800 sq. ft.; good to poor conditions; contact Air Force for more information

3 Buildings
Lake Kickapoo Space Surveillance Station
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430017
Status: Excess
Directions: Buildings 00006; 00007; 00009
Comments: Building 6—400 Sq. ft.; building 7—1,109 sq. ft.; building 9—100 sq. ft.; repairs needed; contact Air Force for more information

Buildings 00001 and 00003

Red River Space Surveillance Center
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430018
Status: Excess
Comments: Building 1 -2,755 sq. ft.; building 3—775 sq. ft.; good conditions; contact Air Force for more information

2 Buildings
Tattnall Space Surveillance Station
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430019
Status: Excess
Directions: Buildings 00006 and 00001
Comments: Building 6—80 sq. ft.; building 1—2,807 sq. ft.; good conditions; contact Air Force for more information

Idaho

Building 4215
Lat. 47.77190W Long. −116.61143
Coure d'Alene ID
Landholding Agency: GSA
Property Number: 54201430006
Status: Surplus
GSA Number: 10–A–ID–0588
Directions: Landholding Agency; US Forest Service; Disposal Agency; GSA
Comments: Off-site removal only; 186 sq. ft.; 12+ months vacant; repairs needed

Illinois

465 Buildings
58049 Midewin NTP
Wilmington IL 60481
Landholding Agency: Agriculture
Property Number: 15201430001
Status: Unutilized
Directions: previously reported by Army/ published in 10/31/95 FR; bldgs. have been transferred to Agric.; bldgs. varies in square footage and current use; please contact Agriculture for more detailed information
Comments: off-site removal only; no future agency need; removal may be extremely difficult due to age/condition and structure type; no maintenance for 17+ yrs.; secured area; contact Agriculture for more info

Maryland

Carroll County Memorial USA RC
404 Malcolm Drive
Westminster MD 21157
Landholding Agency: GSA
Property Number: 54201430003
Status: Excess
GSA Number: 4–DMD–1130AA
Directions: Landholding agency; Army; Disposal Agency; GSA
Comments: 3 Building totaling 15,719 sq. ft., storage/maintenance good conditions; asbestos/lead-based paint/polychlorinated biphenyl; remediation required; contact GSA for more information

Michigan

Alpena Co Reg Apt
5884 A Street; Bulling 4012
Alpena MI 49707–8125
Landholding Agency: Air Force
Property Number: 18201430028
Status: Unutilized
Comments: Off-site removal only; no future agency need; 2,000 sq. ft.; office/storage; deteriorated secured area; contact Air Force for more information

Oklahoma

11 Buildings
23115 West Wekiwa Road
Sand Springs OK 74063–9312
Landholding Agency: COE
Property Number: 31201430002
Status: Underutilized
Directions: 43517; 43518; 43494; 43495; 43430; 43431; 43485; 43454; 43455; 43498; 43499
Comments: Off-site removal only; no future agency need; sq. ft. varies; repairs needed; contact COE for more information

4 Buildings
23115 West Wekiwa Road
Sand Springs OK 74063–9312
Landholding Agency: COE
Property Number: 31201430003
Status: Underutilized
Directions: 43897; 43898; 43906; 43907
Comments: Off-site removal only; no future agency need; sq. ft. varies; repairs needed contact COE for more information

Oregon

Fiddler Mt. Telecom BLD
(1138.005181)
07663; 00; Redwood HWY
Kerby OR 97538
Landholding Agency: Agriculture
Property Number: 15201430004
Status: Excess
Comments: 36 sq. ft.; 37+ years old; rodents and insect infestation; contact Agriculture for more information

Puerto Rico

00801
Fort Buchanan
Fort Buchanan PR 00934
Landholding Agency: Army
Property Number: 21201430001
Status: Excess
Directions: 00801
Comments: Off-site removal only; 2.128 sq. ft.; 12+ months vacant; deteriorated; secured area; contact Army for more information

Texas

2 Buildings; Natural Resource
Conservation Service Waco Facility
200 South Price Street
Waco TX 76501
Landholding Agency: GSA
Property Number: 54201430007
Status: Surplus
GSA Number: 7–A–TX–0556
Directions: Landholding agency; Agriculture; Disposal Agency; GSA.
Comments: 18,460 sq. ft.; storage; 60+ months vacant; very poor condition; within a security fence; contact GSA for more information

Virginia

Johnson House and Shed
12503 Cavalry Court
Spotsylvania VA 22553
Landholding Agency: GSA
Property Number: 54201430005
Status: Excess
GSA Number: 4–I–VA–1145AA
Directions: Landholding Agency; Interior; Disposal Agency; GSA
Comments: Off-site removal only; 1,357 +/− sq. ft.; repairs needed; contact GSA for more information

Land

Colorado

Red River Space Surveillance Center
Lat. 33.19 50.77431 N Long. 093.33 00.35121 W
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430011
Status: Excess
Comments: 60 acres; contact Air Force form more information

Jordan Lake Space Surveillance Station
Lat. 32 39 32.4828 N Long. 086 15 48.6672 W
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430012
Status: Excess
Comments: 9 acres; contact Air Force for more information

San Diego Space Surveillance Station
Lat. 32 34 38.69636 N Long. 116 58 28.92446 W
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430013
Status: Excess
Comments: 109 acres; contact Air force for more information

Colorado

Lake Kickapoo Space Surveillance Station
Lat. 33 33 14.33880 N Long. 098 45 46.47286 W
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430014
Status: Excess
Comments: 1,342 acres; contact Air Force for m more information

Hawkinsville Space Surveillance Station
Lat. 32 17 15.1011 N Long. 083 32 11.1625 W
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430015
Status: Excess
Comments: 131 acres; contact Air Force for more information

Tattnall Space Surveillance Station
Lat. 32 02 37.6891 N Long. 081 55 33.2267 W
Peterson AFB CO
Landholding Agency: Air Force
Property Number: 18201430016
Status: Excess
Comments: 102 acres; contact Air Force for more information

Illinois

FAA Outer Marker
5549 Elizabeth Place
Rolling Meadows IL
Landholding Agency: GSA
Property Number: 54201430004
Status: Excess
GSA Number: I–U–IL–807
Directions: Landholding Agency; FAA; Disposal Agency; GSA
Comments: 9,640 sq. ft.; 12+ months vacant; outer marker to assist planes landing at

O'Hare Airport; contact GSA for more information

Missouri

Former Nike Battery Site
Kansas City 30
15616 S KK Highway
Pleasant Hill MO 64080
Landholding Agency: GSA
Property Number: 54201430002
Status: Surplus
GSA Number: 7–D–MO–0522
Comments: 19.52 acres +/− and 4.02 easement acres +/−; education use; contact GCA for more information

Unsuitable Properties

Building

California

6 Building
Travis AFB
Travis CA 94535
Landholding Agency: Air Force
Property Number: 18201430001
Status: Unutilized
Directions: 713; 43; 723; 720; 242; 40
Comments: Public access denied and no alternative without compromising national security
Reasons: Secured Area

Building 23198
MCAS Camp Pendleton
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77201430001
Status: Excess
Directions: 23198
Comments: Public access denied and no alternative without compromising national security
Reasons: Secured Area

Building 9603
Marine Corps Air Station Miramar
San Diego CA
Landholding Agency: Navy
Property Number: 77201430002
Status: Excess
Directions: 9603
Comments: Du to anti-terrorism/force protection public access denied and no alternation without compromising national security
Reasons: Secured Area

Georgia

Facility 273
Savannah Hilton Head International Airport
Garden City GA 31408
Landholding Agency: Air Force
Property Number: 18201430026
Status: Unutilized
Comments: Public access denied and no alternate without compromising national security
Reasons: Secured Area

Mississippi

Building 156
4715 Hewes Avenue Gulfport
Gulfport MS 39507–4324
Landholding Agency: Air Force
Property Number: 18201430021
Status: Unutilized
Comments: No public access denied and no alterative without compromising; national security
Reasons: Secured Area

Nevada

2 Buildings
National Guard Way
Reno NV 89502
Landholding Agency: Air Force
Property Number: 18201430023
Status: Excess
Directions: 8; 10
Comments: Public access denied and no alterative without compromising; national security
Reasons: Secured Area

10
1776 National Guard Way
Reno NV 89502
Landholding Agency: Air Force
Property Number: 18201430029
Status: Excess
Comments: Public access denied and no alternate without compromising national security
Reasons: Secured Area

New York

Building 130, Energy Sciences & Technology
Brookhaven National Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41201430001
Status: Excess
Comments: Public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Oklahoma

302
Tulsa Air National Guard Base
9100 E 46th Street North
Tulsa OK 74115
Landholding Agency: Air Force
Property Number: 18201430020
Status: Unutilized
Comments: Public access denied and no alternation without compromising national security
Reasons: Secured Area

Rhode Island

372
RI ANG Station, Quonset RI (TWLR)
210 Airport Street
North Kingstown RI
Landholding Agency: Air Force
Property Number: 18201430024
Status: Excess
Comments: Public access denied and no alternative without compromising national security
Reasons: Secured Area

372
210 Airport Street
North Kingstown RI
Landholding Agency: Air Force
Property Number: 18201430031
Status: Excess
Comments: Public access denied and no alternate without compromising national security
Reasons: Secured Area

Texas

1399
FWJS
14657 Sneider
Houston TX 77034
Landholding Agency: Air Force
Property Number: 18201430022
Status: Excess
Comments: Public access denied and no alterative without compromising; national security
Reasons: Secured Area

1289
FWJH
14657 Sneider
Houston TX 77034
Landholding Agency: Air Force
Property Number: 18201430025
Status: Excess
Comments: Public access denied and no alternate without compromising national security
Reasons: Secured Area

Virginia

726 and 730
Radford Army Ammunition Plant
Radford VA 24143–0002
Landholding Agency: Army
Property Number: 21201430002
Status: Underutilized
Directions: 726; 730
Comments: Public access denied and no alternative without compromising national security
Reasons: Secured Area

Wisconsin

303
HTUV
350 East College Avenue
Milwaukee WI 53207
Landholding Agency: Air Force
Property Number: 18201430027
Status: Excess
Comments: Public access denied and no alternate without compromising national security
Reasons: Secured Area

Wyoming

Building 00017
Cheyenne RAP, DPEZ
217 Dell Range Blvd.
Cheyenne WY 82009–4799
Landholding Agency: Air Force
Property Number: 18201430030
Status: Excess
Comments: Public access denied and no alternate without compromising national security
Reasons: Secured Area

[FR Doc. 2014–17837 Filed 7–31–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5802–C–02]

Mortgagee Review Board: Administrative Actions; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice, correction.

SUMMARY: On July 16, 2014, HUD published a notice to advise the public

of the administrative actions taken by HUD's Mortgagee Review Board (Board) against FHA-approved mortgagees during the period from October 1, 2012, to September 19, 2013, and the reasons for these actions. The notice is published as required by Section 202(c)(5) of the National Housing Act. As part of the notice, HUD included a list of lenders that had failed to meet the requirements for annual recertification and whose FHA approvals had been withdrawn. HUD has determined, however, that it erroneously listed two lenders as withdrawn when, in fact, each of the two lenders had appealed the Board's notice of withdrawal prior to the date upon which a withdrawal would take effect and resolved the matter. One of the lenders demonstrated that it had been in compliance prior to HUD's issuance of the Notice of Violation. The other lender resolved the annual recertification issues and paid a civil money penalty. HUD is publishing today's notice, therefore, to correct its July 16, 2014, notice.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW., Room B–133/3150, Washington, DC 20410–8000; telephone (202) 708–2224 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)) requires that HUD ''publish in the **Federal Register** a description of and the cause for administrative action against a (HUD-approved) mortgagee.'' Pursuant to this requirement, HUD published on July 16, 2014, at 78 FR 41586, a notice advising the public of actions taken by the Board from October 1, 2012, to September 19, 2013. As part of its July 16, 2014, notice, HUD included a list, beginning at page 41589, of lenders that had failed to meet the requirements for annual recertification and whose FHA approvals had been withdrawn. HUD has determined, however, that it erroneously included two lenders whose FHA approvals have not been withdrawn. One lender, Acceptance Capital Mortgage Corporation, of Spokane, Washington, appealed the Board's notice of administrative action/proposed withdrawal and settled the matter with HUD by resolving the annual recertification issues and paying a civil money penalty. The other lender, Funding, Incorporated, of Houston, Texas, demonstrated that it had satisfied the annual recertification requirements prior to issuance of the Notice of Violation. As a result, these lenders are in compliance with HUD's annual recertification requirements and have not had their FHA approvals withdrawn.

II. Correction

Based upon the information above, HUD's July 16, 2014, notice is corrected by removing Funding Incorporated (at 78 FR 41590) from the list entirely and stating that Funding Incorporated did not violate HUD's annual recertification requirements and has not had its FHA approval withdrawn, and by stating the following with respect to Acceptance Capital Mortgage Corporation:

1. Acceptance Capital Mortgage Corp., Spokane, WA [Docket No. 13–1468–MRT]

Action: The Board entered into a settlement agreement with Acceptance Capital Mortgage Corp., Spokane, WA, [*Docket No. 13–1468–MRT*] that required the lender to pay a $7,500 civil money penalty, without admitting fault or liability.

Cause: The Board took this action based upon allegations that Acceptance Capital Mortgage Corp. had failed to comply with the Department's annual recertification requirements.

Dated: July 28, 2014.

Biniam Geber,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–18268 Filed 7–31–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5763–N–06]

Implementation of the Privacy Act of 1974, as Amended; Republication and Alteration to System of Records—moveLINQS (mLINQS) Previously the Integrated Automated Travel System (IATS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Re-establish and amended system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (U.S.C. 552a (e)(4)), as amended, and Office of Management and Budget (OMB), Circular No. A–130, notice is hereby given that the Department of Housing and Urban Development (HUD), Office of the Chief Financial Officer (OCFO) proposes to re-establish coverage and provide a name update for a system of records removed from its repository (March 26, 2014, at 79 FR 16805), entitled ''Integrated Automated Travel System (IATS).'' This system was unintentionally removed from the Department's repository and subsequent notice is being filed to re-establish coverage for the system of records, and rename the system ''mLINQS.'' Additional alterations made of the system include new and revised routine uses, and various other alterations, some of which are updates to the categories of records in the system, the authority for maintenance of the system, and the retention and disposal captions. Major changes are summarized in the introductory portion of the ''Supplementary Information'' caption. Moreover, mLINQS is a web-based application utilized by the Department to generate documents associated with permanent Change of Station moves for employees that have been approved for relocation entitlements, and to manage and track relocation obligations and payments for employee moves. This notification supersedes the above mentioned notice requirements set forth by HUD's system of records publication (March 26, 2014 at 79 FR 16805).

DATES: *Effective Date:* The proposed modification will be effective immediately, with the exception of the new and revised routine uses, categories of records, and the authority for maintenance of the system, which will become effective 30 days after publication of this notice, on September 2, 2014, unless comments are received that would result in a contrary determination.

Comments Due Date: September 2, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. [The above telephone number is not a toll free number.] A telecommunications device for hearing- and speech-impaired

persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: This system of records is maintained by HUD's Office of the Chief Financial Officer and includes HUD employees' personally identifiable information that is retrieved by a name or unique identifier. Alteration to this system of records include: The addition of new and updated routine uses that authorize the Department to disclosure records to contractors and providers of service to assist in accomplishing Departmental activities related to travel relocation functions; updates to the entities' locations responsible for preserving records within the system, and the rationales for the period of times and destruction methods for proper disposition of records within the system; and updates to the agency's authority to maintain the system. Hence, this system of records encompasses programs and services of the Department's data collection and management practices. Publication of this notice allows HUD to satisfy its reporting requirement and keep an up-to-date accounting of its system of records publications. The re-established and altered system will incorporate Federal privacy requirements and HUD policy requirements. The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure, by ensuring that information is current and collected only for its intended use, and by providing adequate safeguards to prevent misuse of such information. Additionally, this demonstrates the Department's focus on industry best practices in protecting the personal privacy of the individuals covered by this system notification. This notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for the records, the routine uses made of the records, and the type of exemptions in place for the records. In addition, this notice includes the business address of the HUD officials who will inform interested persons of the procedures whereby they may gain access to and/or request amendments to records pertaining to them.

This publication does meet the threshold requirements for a new system and a report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform as instructed by Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: July 28, 2014.

Rafael C. Diaz,

Chief Information Officer.

SYSTEM OF RECORDS NO.: CFO/FY.05

SYSTEM NAME:

mLINQS.

SYSTEM LOCATION:

Records are located in the HUD CFO Regional Office, 801 Cherry Street, Fort Worth, TX 76102. Backup, recovery, and archived digital media is stored by Amazon Web Services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover current and former HUD employees and HUD employees' spouses and children.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee Information: Name, Social Security Number, Tax Identification Number, Home Address (prior/new), Phone Numbers (work, home, cell), Title, Salary Information (grade/rank), Retirement Plan, W–2 Tax Information, Employee Email Address. Family Information: Names of Family Members (spouse/children), Birth Dates of Family Members (spouse, children), Salary Information of Spouse (if available). This information is entered based on a questionnaire that the employee submits. The Social Security Number is pulled from HUDCAPS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1951 (31 U.S.C. 66a); The Chief Financial Officers Act of 1990 (31 U.S.C. Sec. 501, et. seq.); Executive Order 9397, as amended by Executive Order 13478.

PURPOSE(S):

The purpose of the system of records is to process and manage official HUD relocation obligations and payments, to maintain records on current HUD employees who are relocating to another office location within HUD and have been approved for relocation entitlements, and to record relocation disbursements in order to compute and record taxes and W–2s.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may also be disclosed as a routine use to:

1. IRS and the SSA to generate quarterly 941's and annual W–2's to fulfill HUD's statutory reporting of wage and income reporting requirements to IRS and SSA.

2. GSA in the form of invoices to enable the GSA to perform post audit of the invoices paid by HUD directly to the Household Good Shippers.

3. An authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee to whom the information pertains. If HUD denies claims, HUD employees can appeal to the GSA Civilian Board of Contract Appeals.

4. Officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

5. A relocation travel services provider for billing and refund purposes.

6. A carrier or an insurer for settlement of an employee claim for loss of or damage to personal property incident to service under 31 U.S.C. 3721, or to a party involved in a tort claim against the Federal government resulting from an accident involving a traveler.

7. HUD contractors who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement with HUD, when necessary to accomplish an agency function or other activity related to this system of records considered relevant to accomplishing an agency function.

8. Amazon Web Services for backup, recovery, and archived digital media storage.

9. Appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such

agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

10. Appropriate agencies, entities, and persons to the extent such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I [1]— HUD's Library of Routine Uses published in the **Federal Register** on (July 17, 2012 at 77 FR 41996).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each individual relocatee has a folder with hard copies of these documents which are stored in secure cabinets in the file room under lock and key. Electronic files are stored on a server.

RETRIEVABILITY:

Electronic file records are retrieved by name and social security number.

SAFEGUARDS:

All HUD employees have undergone background investigations. HUD buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Access to electronic records is restricted to authorized personnel or contractors whose responsibilities require access by Contractor ID or HUD ID and password. Hard copy files are stored in secure cabinets in the file room under lock and key. Additionally, users must also sign a Rules of Behavior form certifying they agree to comply with the requirements before they are granted access to the system.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 21, HUD Handbook 2225.6. Records are destroyed or deleted when no longer necessary for agency business in accord with applicable federal standards or in no less than seven years after last action in accord with limitations on civil actions by or against the U.S. Government (28 U.S.C. 2401 and 2415). Paper based records are destroyed by shredding or burning. Electronic Backup and Recovery digital media will be destroyed or otherwise rendered irrecoverable per NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006). This complies with all federal regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Financial Officer for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 3100, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiries about the existence of records contact the Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4156, Washington, DC 20410. Verification of your identity must include original signature and be notarized with two proofs of identity. Written request must include the full name, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR Part 16. Additional assistance may be obtained by contacting: U.S. Department of Housing and Urban Development, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 or the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the subject of the record, the documents created from this information to facilitate the relocation, household goods carriers, and document information from HUDCAPS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2014–18274 Filed 7–31–14; 8:45 am]

BILLING CODE 4210–67–P

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append1.pdf.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5763–N–07]

Privacy Act; Notification of Amended Privacy Act System of Records, Privacy Act Request and Appeals Files

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of amended system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (U.S.C. 552a(e)(4)), as amended, and Office of Management and Budget (OMB), Circular No. A–130, notice is hereby given that the Department of Housing and Urban Development (HUD), Office of the Chief Information Officer (OCIO) has amended one of its system of records entitled the ''Privacy Act Request and Appeals Files'', previously known as ''HUD/Dept-52, Privacy Act Record Files''. Additionally, the amended notices serve to convey information established under the previously published system of records in a more clear and cohesive format. The amended system of records will be included in the Department of Housing and Urban Development's inventory of systems of records and will replace the HUD/Dept-52, Privacy Act Record Files system of records reported under HUD's Library of Routine Uses, published in the **Federal Register** on (July 17, 2012 at 77 FR 41996). The changes under this notice are non-substantive and thus do not meet the threshold requirements for filing a report to OMB and Congress.

DATES: *Effective Date:* This action shall be effective immediately August 1, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. [The above telephone number is not a toll free number.] A telecommunications device for hearing- and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: This system of records is maintained by HUD's Office of the Chief Information Officer, and includes personally identifiable information submitted by individuals requesting access or amendment to records maintained by the Department. The system encompasses programs and services in place for the Department's data collection and management practices. Publication of this notice allows HUD to

publish up-to-date and clear information on the system of records. The revised proposal will incorporate Federal privacy requirements, and HUD policy requirements. The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system of records from unauthorized disclosure, by ensuring that information is current for its intended use, and by providing adequate safeguards to prevent misuse of such information. Additionally, this notice demonstrates the Department's focus on industry best practices in protecting the personal privacy of the individuals covered by this system notification. This notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for those records, the routine uses made of the records and the types of exemption in place for the records. In addition, the notice includes the business address of the HUD officials who will inform interested persons of the procedures whereby they may gain access to and/or request amendments to records pertaining to them.

This publication does not meet the threshold requirements for filing a report to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform as instructed by Paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: July 28, 2014.

Rafael C. Diaz,

Chief Information Officer.

CIO/QMPP.01

SYSTEM NAME:

Privacy Act Request and Appeals Files.

SYSTEM LOCATION:

Privacy Act Office, Freedom of Information Act Office, 451 Seventh Street SW., Washington, DC 20715. The system file may be accessible at HUD Field and Regional offices [1] where in some cases Privacy Act records are maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains correspondence and other documents related to request made by individuals to HUD's Privacy Office or Freedom of Information Act (FOIA) Office when inquiring about the existence of records about themselves, access and/or correction to those records, or when requesting review of an initial denial of a request.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, Social Security Number, and other individually identifying information of requester, nature of the request, and records reflecting processing and disposition of the request by the Department.

AUTHORITY FOR MAINTNENACE OF THE SYSTEM:

Privacy Act, 5 U.S.C. 552a(c).

PURPOSE(S):

This system is used to handle the workload for Privacy Act requests. This includes the assigning of work, processing work electronically, tracking requests, and responding to requests received by the Department. The records in the systems are used by the Privacy Act and FOIA staff involved in the processing of Privacy Act requests, as well as by appeals officials and members of the Office of General Counsel, when applicable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed from this system for routine uses to:

1. A congressional office, from the record of an individual, in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department of Justice for the purpose of obtaining advice regarding whether or not the records should be disclosed, when applicable.

3. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

4. To contractors, grantees, experts, consultants, and the agents of thereof, and others performing or working on a contract, service, grant, cooperative agreement with HUD, when necessary to accomplish an agency function related to its system of records, limited to only those data elements considered relevant to accomplishing an agency function. Individuals provided information under this routine use is subject to the same Privacy Act requirements and limitations on disclosure as are applicable to HUD officers and employees.

5. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

6. To appropriate agencies, entities, and persons to the extent such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I [2]—HUD's Library of Routine Uses published in the **Federal Register** on (July 17, 2012 at 77 FR 41996).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The original, or a copy, of the incoming request and the written response are maintained in case file folders and stored in metal file cabinets. Cross-reference data is maintained in a correspondence control log stored in a personal computer and printed as hard copy on paper file and stored in file metal file cabinets as needed.

RETRIEVABILITY:

Records are almost always retrieved by the name of the individual who made the Privacy Act and FOIA related request during a given calendar year. Incoming Privacy Act requests that are related to FOIA are assigned a system-generated case file number that identifies the year in which the request was made, and the number of the request. Requests unrelated to FOIA are

[1] *http://portal.hud.gov/hudportal/HUD?src=/localoffices.*

[2] *http://portal.hud.gov/hudportal/documents/huddoc?id=append1.pdf.*

submitted to the Privacy Act Office, and assigned the requestors name that identifies the year in which the request was made and the number of the request made.

SAFEGUARDS:

1. Access to records is restricted to Privacy Act staff, involved program officials, FOIA staff, appeals officials, and members of the Office of General Counsel involved in the processing of Privacy Act requests and/or appeals.

2. Physical Safeguards: The case file folders are stored in file cabinets in secure areas that are either occupied by staff personnel involved in processing Privacy Act requests and appeals or locked up during non-working hours, or whenever staff is not present in these areas. In addition, entrance to the buildings where case files are maintained is controlled by security guards.

3. Procedural Safeguards: Access to records is limited to those staff members who are familiar with Privacy Act or FOIA related request that have a need-to-know. System Managers are held responsible for safeguarding the records under their control. Cross-reference data is maintained in a correspondence control log stored in a personal computer for which access is granted by User ID and Password.

RETENTIONAL AND DISPOSAL:

The National Archives and Records Administration issues General Records Schedules 14 provide disposition authorization for records related to Privacy Act Request as follows:

1. Case files are retained for two years after date of response, and destroyed when access to all requested records is granted, and not appealed (NC1–64–77–1, item 25a1).

2. Case files are retained for two years after date of response for nonexistent records and then destroyed, when not appealed (NCI–64–77–1, Item 25a2a).

3. Case files are retained and destroyed five years when access to all or part of the records is denied, and not appealed (NC1–64–77–1, Item 25a3a).

4. In the event of an appeal, the files are destroyed six years after final determination by the Department, or three years after final adjudication by the courts, or six years after the time at which a requester could file suit, whichever is later.

5. Correspondence control logs are destroyed six years after the date of last entry. Records are to be destroyed when superseded or when requested documents are declassified or destroyed under the prescribed General Records Schedule (NCI87–7, Item31c). Hence, paper based records will be destroyed by burning; Electronic records will be destroyed per NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006).

SYSTEM MANAGER(S) AND ADDRESS:

Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. (see Appendix I, following, for additional locations where in some cases Privacy Act records are accessed and maintained.

NOTIFICATION AND ACCESS PROCEDURES:

Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073, in accordance with the procedures in 24 CFR Part 16. The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. A person may request access to these records in writing.

CONTESTING RECORDS PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting:

(i) In relation to contesting contents of records, the Departmental Privacy Act, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2256, Washington, DC 20410, or

(ii) In relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

The source of information is from the individuals making a request for Privacy Act records, and components of the Department and other agencies that search for, and provide, records and related correspondence maintained in the case files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a.

[FR Doc. 2014–18271 Filed 7–31–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–FHC–2014–N128; FXFR13340300000–145–FF03F00000]

Final Environmental Impact Statement and Final Programmatic Agreement; Ballville Dam Project, Sandusky County, Ohio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Under the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for the Ballville Dam Project, in Sandusky County Ohio. Additionally, the Service is advising the public of the availability of the final Programmatic Agreement under Section 106 of the National Historic Preservation Act and its implementing regulations. The Service is furnishing this notice to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to NEPA.

DATES: *Comments:* We will accept comments received or postmarked on or before September 2, 2014. The issuance of the Record of Decision (ROD) will occur no sooner than 30 days after the publication of the Environmental Protection Agency's notice of the Final Environmental Impact Statement in the **Federal Register**.

ADDRESSES: *Document availability:* You may obtain copies for review by one of the following methods:

- *Internet:* You may obtain copies of the documents on the Internet at *http://www.fws.gov/midwest/fisheries/ballville-dam.html.*
- *U.S. Mail:* You may obtain the documents by mail from the Fisheries Office in the Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).
- *In-Person:* You may view hard copies of the documents in person at the following locations:

○ Birchard Public Library, 423 Croghan Street, Fremont, OH 43420.

○ Ecological Services Field Office, U.S. Fish and Wildlife Service, 4625

Morse Road, Suite 104, Columbus, OH 43230 (614–416–8993, voice; 614–416–8994, fax).

○ U.S. Fish and Wildlife Service, Midwest Regional Office, Fisheries, 9th Floor, 5600 American Boulevard West, Suite 990, Bloomington, MN 55437–1458 (612–713–5350, voice; 612–713–5292, fax).

Comment submission: You may submit comments by one of the following methods:

- *U. S. Mail or Hand-Delivery:* Brian Elkington, U.S. Fish and Wildlife Service, Midwest Regional Office, Fisheries, 9th Floor, 5600 American Boulevard West, Suite 990, Bloomington, MN 55437–1458.
- *Email: Ballvilledam@fws.gov.*
- *Fax:* 612–713–5289 (Attention: Brian Elkington).

We request that you send comments by only the methods described above (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Brian Elkington, 612–713–5168.

SUPPLEMENTARY INFORMATION:

Background

We publish this notice in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1506.6). The Service, in conjunction with our cooperating agencies, prepared this FEIS for the Ballville Dam Project with the intent to address the environmental, economic, cultural and historical, and safety issues associated with the proposed removal of the dam and a suite of alternatives.

Ballville Dam is currently a complete barrier to upstream fish passage and impedes hydrologic processes. The purpose for the award of Federal funds and preparation of this FEIS are to restore natural hydrological processes over a 40-mile stretch of the Sandusky River, re-open fish passage to 22 miles of new habitat, restore flow conditions for fish access to new habitat above the impoundment, and improve overall conditions for native fish communities in the Sandusky River system both upstream and downstream of the Ballville Dam, restoring self-sustaining fish resources.

Pursuant to the National Historic Preservation Act (NHPA; 16 U.S.C. 470, 470f), the Service has initiated section 106 consultation with the Ohio State Historic Preservation Office for the project. The section 106 process has been completed and the signed Programmatic Agreement is included as an appendix to the FEIS.

Public Involvement

Public scoping for the Draft Environmental Impact Statement (DEIS) was first initiated in the form of a notice of intent to conduct a 30-day scoping period published in the **Federal Register** on October 21, 2011 (76 FR 65526). Utilizing the public scoping comments, the Service prepared a DEIS to analyze the effects of the alternatives. The DEIS was released for a 60-day public comment on January 27, 2014 (79 FR 4354). A public meeting was held on February 19, 2014, at Terra State Community College, 2830 Napoleon Road, Fremont, OH 43420 to solicit additional input from the public on the DEIS. The official comment period ended on March 28, 2014. Twenty-nine comments were received, and were used to further focus the EIS. The comments and responses have been included as an appendix to the FEIS.

Public Comments

You may submit your comments and materials concerning this notice by one of the methods listed in **ADDRESSES**. We request that you send comments only by one of the methods described in **ADDRESSES**.

If you submit a comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under NEPA (42 U.S.C. 4321 *et seq.*) and it's implementing regulations (40 CFR 1506.6; 43 CFR Part 46), and section 106 of the NHPA (16 U.S.C. 470, 470f) and its implementing regulations (36 CFR part 800). A decision in the form of a ROD will be made no sooner than 30 days after the publication of the EPA's FEIS notice in the **Federal Register**.

Aaron Woldt,

Deputy Assistant Regional Director, Fisheries, Midwest Region.

[FR Doc. 2014–17917 Filed 7–31–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2014–N148; FXES11130200000–145–FF02ENEH00]

Receipt of Incidental Take Permit Applications for Participation of Applicants in the Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Under the Endangered Species Act, as amended (Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on incidental take permit (ITP) applications for take of the federally listed American burying beetle resulting from activities associated with the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and related well field activities in Oklahoma. If approved, the permits would be issued to applicants under the approved *Oil and Gas Industry Conservation Plan Associated With Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP).

DATES: To ensure consideration, written comments must be received on or before September 2, 2014.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the permit number when requesting documents or submitting comments.

○ *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

○ *Electronically: fw2_hcp_permits@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at Environmental Review, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; or by telephone at 505–248–6651.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.;* Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on incidental take permit (ITP) applications for take of the federally listed American burying beetle (*Nicrophorus americanus*) resulting from activities

associated with the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and related well field activities in Oklahoma. If approved, the permits would be issued to the applicants under the *Oil and Gas Industry Conservation Plan Associated with Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP). The ICP was made available for comment on April 16, 2014 (79 FR 21480), and approved on May 21, 2014 (publication of the FONSI & Canyon Creek Energy Operating application notice was on July 25, 2014, 79 FR 43504). The ICP and the associated environmental assessment/finding of no significant impact are available on the Web site at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these documents.

Applications Available for Review and Comment

We, the U.S. Fish and Wildlife Service, invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications under the ICP, for incidental take of the federally listed American burying beetle (*Nicrophorus americanus;* ABB). Please refer to the appropriate permit number (e.g., Permit No. TE–123456) when requesting application documents and when submitting comments. Documents and other information the applicants have submitted with this application are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–40328B

Applicant: ScissorTail Energy, LLC and Subsidiaries, Tulsa, OK.

Applicant requests a new permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Permit TE–40320B

Applicant: Enable Midstream Partners, LP, Oklahoma City, OK.

Applicant requests a new permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: July 17, 2014.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2014–18165 Filed 7–31–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX14MN00CO0000]

Agency Information Collection Activities: Request for Comments on iCoast—Did the Coast Change?

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, *iCoast—Did the Coast Change?*

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR.

DATES: To ensure that your comments on this ICR are considered, we must receive them on or before September 2, 2014.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–NEW: iCoast—Did the Coast Change?'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *Gs-info_collection@usgs.gov* (email). Please reference 'OMB Information Collection 1028–NEW: iCoast—Did the Coast Change?' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Sophia B. Liu, Research Geographer, Center for Coastal and Watershed Studies, US Geological Survey, 600 4th Street South, Saint Petersburg, FL 33705, *sophialiu@usgs.gov.* You may also find information about this Information Collection Request (ICR) at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

As part of its mission to document coastal change, the USGS has been acquiring aerial photographs of the coast before and after each major storm for the past 18 years to assess damages to the natural landscape and the built environment. A typical mission consists of approximately 2,500 photographs. The digital photo-archive maintained by the USGS is a valuable environmental record containing approximately 140,000 photographs taken before and after 23 extreme storms along the Gulf and Atlantic Coasts. At the same time, the USGS has been developing mathematical models that predict the likely interactions between storm surge and coastal features, such as beaches and dunes, during extreme storms, with the aim of predicting areas that are vulnerable to storm damage. Currently the photographs are not used to inform the mathematical models. The models are based primarily on pre-storm dune height and predicted wave behavior.

If scientists could ''ground truth'' coastal damage by comparing before and after photographs of the coast, the predictive models might be improved. It is not physically or economically possible for USGS scientists to examine all aerial photographs related to each storm, however, and automation of this process is also problematic. Image analysis software is not yet sophisticated enough to automatically identify damages to the natural landscape and the built environment that are depicted in these photographs; human perception and local knowledge are required. 'iCoast—Did the Coast Change?' (hereafter referred to as 'iCoast') is a USGS research project to construct a web-based application that will allow citizen volunteers to compare these before and after photographs of the coast and identify changes that result from extreme storms through a process known as 'crowdsourcing' (*http://en.wikipedia.org/wiki/Crowdsourcing*). In concept, this application will be similar to those of other citizen science image comparison and classification projects such as the Citizen Science Alliance's Cyclone Center project, (see *www.cyclonecenter.org*), which asks people to classify types of cyclones by comparing satellite images.

There are two distinct purposes to 'iCoast':

- To allow USGS scientists to 'ground truth' or validate their predictive storm surge models. These mathematical models, which are widely used in the emergency management community for locating areas of potential vulnerability to incoming storms, are currently based solely on pre-storm beach morphology as determined by high-resolution elevation data, and predicted wave behavior derived from parameters of the approaching storm. The on-the-ground post-storm observations provided by citizens using 'iCoast' will allow scientists to determine the accuracy of the models for future applications, and
- to serve as a repository of images that enables citizens to become more aware of their vulnerability to coastal change and to participate in the advancement of coastal science.

The application consists of sets of before-and-after photographs from each storm with accompanying educational material about coastal hazards. Since the photographs of a given area are taken on different dates following slightly different flight paths, the geographic orientation of before and after images will differ slightly. Often there will be more than one image covering approximately the same geographic area and showing the same coastal features. Participants are asked to identify which post-storm image best covers the same geographic area and shows the same natural and man-made features as the image taken after the storm. After the best match between before-and-after aerial photographs is established, participants will classify post-storm coastal damage using simple one-or-two word descriptive tags. This type of tagging is similar to that used in commercial photo-sharing Web sites such as Flickr (*www.flickr.com*). Each participant will classify photographs of their choice. They may classify as many photographs as they wish in as many sessions as they choose.

In order for a citizen to participate in classifying the photographs, the following information must be collected by this application:

(1) Participants will register for the 'iCoast' application using externally issued credentials via the Federally approved ''Open Identity Exchange'' (*www.openid.net*) method. This Federal Government program benefits users by accelerating their sign up, reducing the frustration of maintaining multiple passwords, allowing them to control their own identity, and minimizing password security risks. User credentials will be managed and authenticated by Google, an Identity Provider approved by the Federal Government. During the login process participants will be redirected to a Google owned and operated login page. Following successful authentication of Id and password, participants are asked by Google to confirm agreement to their Google email address being shared with 'iCoast'. Users have the option to decline this and halt the login process with no information shared to 'iCoast'. If a participant accepts the sharing of their email address then the USGS will store the address within the 'iCoast' database. 'iCoast' is never supplied nor does it request a participant's password directly. Storing of the participant's email address by 'iCoast' is necessary to permit the pairing of Google login credentials with their 'iCoast' profile. The USGS will encrypt all stored participant email addresses. No other information or Google account access is shared by Google to 'iCoast' and nothing is shared from 'iCoast' to Google at any time.

(2) Level of expertise: At initial log in to 'iCoast', the participant will be asked to indicate what type of 'crowd' or group he or she belongs to by picking from a pre-determined list (e.g. coastal scientist, coastal planner, coastal resident, general public etc.). The participant may also optionally contribute his or her professional affiliation in an open text box, but this is not required. Professional affiliation may provide additional information to the scientists to more fully assess the accuracy of a participant's classifications. Provision of level of expertise alone will not allow an individual to be personally identified.

(3) Keyword tagging: After comparing pre-and post-storm aerial photographs, participants can select predefined keyword tags OR they can submit their own in a free-form text field. The keyword tags will help the USGS determine classification accuracy, and confirm or refute pre-storm predictions of coastal inundation and damage derived from the mathematical storm surge models.

This application will have many benefits. It will serve the cause of open government and open data, in that these images will be available to the public in an easily accessible online format for the first time. It will enhance the science of coastal change and allow for more accurate storm surge predictions, benefitting emergency managers and coastal planners. It will also familiarize coastal communities with coastal processes and increase their awareness of vulnerabilities to extreme storms. We anticipate that this application will be used by educators to further science, technology, engineering and mathematics (STEM) education; outreach to educators is planned.

II. Data

OMB Control Number: 1028–NEW.

Title: iCoast—Did the Coast Change?

Type of Request: Approval of new information collection.

Respondent Obligation: None (participation is voluntary).

Frequency of Collection: Occasional.

Description of Respondents: Coastal scientists, coastal managers, marine science students, emergency managers, citizens/residents of coastal communities.

Estimated Total Number of Annual Responses: 2500.

Estimated Time per Response: We estimate that it will take 30 minutes per person to log into the system, read the introductory and help material and tag 2–3 photo comparisons.

Estimated Annual Burden Hours: 1250.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and

you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On February 28, 2014 we published a **Federal Register** notice (79 FR 11461) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on April 22, 2014. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Richard Z. Poore,

Center Director, USGS Coastal and Marine Science Center.

[FR Doc. 2014–18148 Filed 7–31–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–NACA–15266; PX.XDESC0047.00.1]

Final Environmental Impact Statement for the Antietam, Monocacy, Manassas White-Tailed Deer Management Plan

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and the Council on Environmental Quality regulations, the National Park Service (NPS) has prepared a Final Environmental Impact Statement (FEIS) for the White-tailed Deer Management Plan (Plan), Antietam National Battlefield, Maryland; Monocacy National Battlefield, Maryland; and Manassas National Battlefield Park, Virginia. The plan would manage white-tailed deer populations in order to support preservation of the natural and cultural landscape.

SUPPLEMENTARY INFORMATION: Antietam National Battlefield, Monocacy National Battlefield, and Manassas National Battlefield Park are all located in the NPS National Capital Region within about an hour's drive from Washington, DC. The U.S. Congress set aside these park units to represent outstanding aspects of our natural and cultural heritage. All three battlefields commemorate one or more Civil War battles and the history associated with these battles.

The purpose of the FEIS and Plan is to develop a deer management strategy that supports preservation of the natural and cultural landscape through the protection and restoration of native vegetation. Although relatively rare at the turn of the twentieth century, white-tailed deer have grown abundant in the Mid-Atlantic region during recent years. Current deer densities of 130–230 deer per square mile are substantially larger than commonly accepted sustainable densities for this region, estimated at about 15–25 deer per square mile. In addition, the NPS needs to plan for the potential threat posed by chronic wasting disease (CWD), which could spread to these park units.

The NPS has developed the FEIS under section 102(2)(C) of the National Environmental Policy Act of 1969 and consistent with laws, regulations, and policies applicable to NPS units, and with the purposes of these three parks. The FEIS describes and analyzes three action alternatives (B, C, and D) to guide management actions and strategies for white-tailed deer. The alternatives include lethal and non-lethal actions to manage and reduce the impacts of white-tailed deer. Included in the alternatives is the no-action alternative (alternative A), which would continue current deer management. Under Alternative A, the parks would also take no new actions with respect to CWD.

Alternative B of the Plan provides a nonlethal deer reduction option to implement nonsurgical reproductive control of does when an acceptable reproductive control agent is available that meets NPS established criteria. Large constructed exclosures would also protect 5–20% of the forested area of the parks to allow reforestation. Additional techniques include fencing of crops and woodlots, crop protection through sacrificial rows, and aversive conditioning.

Alternative C of the Plan provides a lethal deer reduction option through the use of sharpshooting with firearms, possible capture and euthanasia to reduce deer populations to the target density and maintain that level. Donation of meat would also occur, subject to any concerns or restrictions related to CWD.

Alternative D of the Plan provides a combined lethal and nonlethal deer reduction option through the use of sharpshooting with firearms, possible capture, and euthanasia to reduce deer populations to a desirable level and maintain that level. Once the target density has been reached, it may use nonsurgical reproductive control of does when an acceptable reproductive control agent is available that meets NPS established criteria.

Under all three of the action alternatives (Alternatives B, C, and D), the parks would also implement a long-term CWD response plan. Under this plan, if CWD is confirmed in or within 5 miles of a park, the park would lethally reduce the deer population to decrease potential for CWD transmittal and spread. Deer populations could be reduced to 15–20 deer per square mile or as needed to cooperate with state programs and testing requirements, but would be reduced to no less than 10 deer per square mile. Deer will be tested for CWD.

The FEIS evaluates potential environmental consequences of implementing the alternatives. Impact topics include the natural, cultural, and socioeconomic resources.

The Draft EIS was released in July 2013 and was available for public and agency review and comment beginning with publication of the Notice of Availability in the **Federal Register.** Comments were accepted during the 60-day public comment period. After this public review, NPS revised this document in response to public comments.

The FEIS is now available. Interested persons and organizations may obtain the FEIS online at *http://parkplanning.nps.gov/anti.* A 30-day no-action period will follow this Notice of Availability in the **Federal Register**. After this period, the selected alternative will be documented in a Record of Decision that will be signed by the Regional Director of the National Capital Region of the NPS. Notice of approval of the EIS would be published

similarly. For further information contact Tracy Atkins at 303–969–2325.

Date: June 10, 2014.

Lisa A. Mendelson-Ielmini,

Acting Regional Director, National Park Service, National Capital Region.

[FR Doc. 2014–17920 Filed 7–31–14; 8:45 am]

BILLING CODE 4310–DL–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Extension of Comment Period for Request for Information and Comments on the Preparation of the 2017–2022 Outer Continental Shelf (OCS) Oil and Gas Leasing Program

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Extension of Comment Period.

SUMMARY: On June 16, 2014, BOEM published a Request for Information and Comments on the preparation of a new Oil and Gas Leasing Program for 2017–2022, as required by section 18 of the OCS Lands Act (43 U.S.C. 1344). The Act requires the Department of the Interior to invite and solicit information on all 26 OCS planning areas from interested and affected parties as the first step in the preparation of a Five Year OCS Oil and Gas Leasing Program (Five Year Program).

The June 16 notice provided for a 45-day comment period, which is scheduled to end on July 31, 2014. BOEM has received requests from several coastal states to extend the comment period. To further the intent of the OCS Lands Act to collect information for future decision-making and provide ample opportunity for interested and affected parties to comment, BOEM is extending the comment period to August 15, 2014. See instructions for commenting below as they are simplified from the original notice as explained on the BOEM Five Year Web page.

DATES: BOEM must receive all comments and information by August 15, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Hammerle, Five Year Program Manager, at (703) 787–1613.

Public Comment Procedure

BOEM will accept comments in one of two formats: internet commenting system or regular mail. BOEM's preference is to receive comments via the internet commenting system. Comments should be submitted using only one of these formats, and include full name and address of the individual submitting the comment(s). Comments submitted by other means may not be considered. BOEM will not consider anonymous comments. BOEM will make available for public inspection in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

BOEM's practice is to make comments, including the names and addresses of individuals, available for public review. An individual commenter may ask that BOEM withhold from the public record his or her name, home address, or both, and BOEM will honor such a request to the extent allowable by law. If individuals submit comments and desire withholding of such information, they must so state prominently at the beginning of their submission.

Commenting via Internet

Internet comments should be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.* BOEM requests that commenters follow these instructions to submit their comments via this Web site:

To Comment Electronically (preferred method)

1. Go to Regulations.gov and enter BOEM–2014–0059–0001 in the Search box.

2. Click the blue 'Comment Now' button to submit your comments.

Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Commenting via Regular Mail

Mail comments and information on the 2017–2022 Program to Ms. Kelly Hammerle, Five Year Program Manager, BOEM (HM–3120), 381 Elden Street, Herndon, Virginia 20170. Environmental comments relevant to oil and gas development on the OCS should be sent to Mr. James F. Bennett, Chief, Division of Environmental Assessment, BOEM (HM–3107), 381 Elden Street, Herndon, Virginia 20170. If commenters submit any privileged or proprietary information to be treated as confidential, they should mark the envelope ''Contains Confidential Information.''

Dated: July 29, 2014.

L. Renee Orr,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2014–18269 Filed 7–31–14; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

United States and Mexico; United States Section Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for Allowing Avian Hunting in Designated Areas Along the Rio Grande Canalization Project, Sierra and Doña Ana Counties, New Mexico

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the United States Section, Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the United States Section hereby gives notice that the *Final Environmental Assessment for Allowing Avian Hunting in Designated Areas Along the Rio Grande Canalization Project, Sierra and Doña Ana Counties, New Mexico* is available.

A notice of the draft EA was published in the **Federal Register** on July 25, 2013 (**Federal Register** Notice, Vol. 78, No. 143, Page 44969) and provided a thirty (30) day comment period. This EA analyzed the potential impacts of allowing migratory and game bird hunting within designated areas on USIBWC property in Doña Ana County, New Mexico, along the New Mexico portion of the Rio Grande Canalization Project, which extends from Percha Dam near Arrey, New Mexico downstream to American Dam in El Paso, Texas. The designated hunting areas were modified in the Final EA in response to public comments. An environmental impact statement will not be prepared.

FOR FURTHER INFORMATION CONTACT: Elizabeth Verdecchia, Natural Resources Specialist, Environmental Management Division; United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El

Paso, Texas 79902. Telephone: (915) 832–4701, email: *Elizabeth.Verdecchia@ibwc.gov.* Background: Availability: The electronic version of the Final EA and FONSI is available from the USIBWC Web page: *http://www.ibwc.gov/EMD/EIS_EA_Public_Comment.html.*

Dated: July 25, 2014.

Matthew Myers,

General Counsel.

[FR Doc. 2014–18177 Filed 7–31–14; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–458 and 731–TA–1154 (Review)]

Certain Kitchen Appliance Shelving and Racks From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping and countervailing duty orders on certain kitchen appliance shelving and racks from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 2, 2014. Comments on the adequacy of responses may be filed with the Commission by October 14, 2014. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* August 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 14, 2009, the Department of Commerce issued antidumping and countervailing duty orders on imports of certain kitchen appliance shelving and racks from China (74 FR 46971). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission found two *Domestic Like Products:* (1) Certain refrigeration shelving and baskets for refrigerators, freezers, combination refrigerator/freezers and other refrigerating or freezing equipment (''refrigeration shelving''); and (2) certain oven racks, side racks, and subframes for cooking stoves, ranges, and ovens (''oven racks'').

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. Based on its original determinations of two separate *Domestic Like Products,* the Commission found two *Domestic Industries* consisting of the following: (1) All producers of certain refrigeration shelving and baskets for refrigerators, freezers, combination refrigerator/freezers, and other refrigerating or freezing equipment; and (2) all producers of certain oven racks, side racks, and subframes for cooking stoves, ranges, and ovens.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is September 14, 2014.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 14–5–317, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 2, 2014. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 14, 2014. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: Please provide the requested information separately for each *Domestic Like Product,* as defined by the Commission in its original determinations, and for each of the products identified by Commerce as *Subject Merchandise.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Products,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industries* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industries.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Products.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Products* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Products* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Products,* provide the following information on your firm's operations on the products during calendar year 2013, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Products* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Products* (i.e., the level of production that your establishment(s) could reasonably have

expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Products* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Products* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Products* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Products* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Products* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Products* and *Domestic Industries;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 25, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17913 Filed 7–31–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Second Review)]

Barium Carbonate From China: Scheduling of A Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on barium carbonate from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[1] For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 24, 2014.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

[1] The Commission has the authority to toll statutory deadlines during a period when the government is closed. Because the Commission was closed on February 13, March 3, and March 17, 2014 due to inclement weather in Washington, DC, the statutory deadline may be tolled by up to three days.

SUPPLEMENTARY INFORMATION:

Background.—On May 9, 2014, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (79 FR 29454, May 22, 2014). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on Thursday, November 13, 2014, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on Wednesday, December 03, 2014, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Friday, November 28, 2014. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Tuesday, December 02, 2014, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is Monday, November 24, 2014. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is Friday, December 12, 2014. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before Friday, December 12, 2014. On Tuesday, January 13, 2015, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before Thursday, January 15, 2015, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 28, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–18078 Filed 7–31–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Windshield Wipers and Components Thereof, DN 3025;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Valeo North America, Inc. and Delmex de Juarez S. de R.L. de C.V. on July 25, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain windshield wipers and components thereof. The complaint names as respondents Federal-Mogul Corp. of Southfield, MI; Federal-Mogul Vehicle Component Solutions, Inc. of Southfield, MI and Federal-Mogul S.A. of Belgium. The complainant requests that the Commission issue a permanent limited exclusion order and permanent cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3025'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 28, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–18084 Filed 7–31–14; 8:45 am]

BILLING CODE 7020–02–P

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov*.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov*.

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*.

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov*.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Almac Clinical Services, Inc. (ACSI)

ACTION: Notice of registration.

SUMMARY: Almac Clinical Services, Inc. (ACSI) applied to be registered as an importer of certain basic classes of narcotic controlled substances. The Drug Enforcement Administration (DEA) grants Almac Clinical Services, Inc. (ACSI) registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated April 21, 2014, and published in the **Federal Register** on April 28, 2014, 79 FR 23373, Almac Clinical Services, Inc. (ACSI), 25 Fretz Road, Souderton, Pennsylvania 18964, applied to be registered as an importer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Almac Clinical Services, Inc., (ACSI) to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of the basic classes of controlled substances listed:

Controlled substance	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

The import of the above listed basic classes of controlled substances is granted only for analytical testing and clinical trials. This authorization does not extend to the import of finished Food and Drug Administration approved or non-approved dosage forms for commercial distribution in the United States.

Dated: July 22, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–18279 Filed 7–31–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for the Youth Career Connect Grant Program, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents are properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about Youth Career Connect (YCC) [SGA/DFA PY–13–01] grant program.

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before September 30, 2014.

ADDRESSES: Submit written comments to Office of the Assistant Secretary for Policy, 200 Constitution Avenue NW., Room S–2312, Washington, DC 20210, Attention: Evan Rosenberg. Telephone number: 202–693–3949 (this is not a toll-free number). Fax: 202–693–3593. Email: *ycc@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In applying for the YCC grant program, grantees agreed to submit participant-level data and quarterly aggregate reports for individuals who receive services through YCC programs and their partnerships with entities administering the workforce investment system as established under Section 1169(b) and 117 of the Workforce Investment Act of 1998 (WIA), Local Education Agencies (LEA's), non-profit organizations with program model experience, education and training providers such as community colleges and other institutions of higher education and employer partners. The reports will include aggregate data on demographic characteristics, types of services received, placements, program outcomes, and follow-up status. Specifically, they will summarize data on participants who received core YCC program services, program enrollment, retention and credential rates, placement services, and other services essential to successful outcomes for YCC program participants.

This document requests approval for a new information collection to meet the reporting and recordkeeping requirements of the YCC grant program.

Five outcome measures will be used to measure success in the YCC grant programs:

Long-Term Measures

- Final Program Retention Rate—the percentage of participants who complete the program, of those who enter the program;
- High School Diploma Attainment Rate—the percentage of participants who attain a high-school diploma;
- Credential Attainment Rate—the percentage of participants who attain an industry-recognized credential in the specified H–1B industry or occupation;
- Diploma and Credential Attainment Rate—the percentage of participants who attain a high-school diploma and credential in the specified H–1B industry or occupation; and
- Placement Rate—the percentage of participants who are placed in one of the following: Unsubsidized employment, post-secondary education, occupational skills training, or Registered Apprenticeship. (The performance report also will include separate counts of the number of participants who enter unsubsidized employment, enter post-secondary education, enter occupational skills training, and enter a Registered Apprenticeship.)

In addition to the five outcome measures described above, grantees will report on a number of leading indicators that serve as predictors of success. These indicators include the following short and long-term measures:

Short-Term Measures

- Enrollment Rate—the number of participants enrolled in the program compared to the target number of participants identified in the grant application;
- Attendance Rate—the rate of school attendance by participants in the program;
- Chronic Absence Rate—the percentage of participants who have missed 10 percent of school days for any reason-excused or unexcused—as well as suspensions;
- Mentoring Rate—percentage of participants who have matched mentors and participate in formal mentoring;
- Yearly Program Retention Rate—percentage of participants who continue in program from one school year to the next;
- Work Readiness Indicator—the percentage of participants who are deemed work ready based on an employer evaluation conducted at the end of each internship/work experience (using the DOL-developed work readiness tool found at: *http://wdr.doleta.gov/directives/attach/TEGL/TEGL07-10a4.pdf*);
- Internship Placement and Completion Rates—the percentage of program participants who begin an internship and, of those who begin an internship, the percentage who complete;
- Post-Secondary Credit Attainment Rate—the percentage of participants who attain post-secondary education credit from courses taken during the program; and
- Average Post-Secondary Credit Hours Attained—the average number of post-secondary credits attained per participant while in the program.

This information collection maintains a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold YCC grantees appropriately accountable for the Federal funds they receive, allowing the Department to fulfill its oversight and management responsibilities.

The information collection for YCC grantee performance reporting includes setting up an online Participant

Tracking System (PTS) that will collect participant-level data.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: New collection.

Title: Youth Career Connect (YCC) grant program.

OMB Number: OMB Control Number 1205–0NEW.

ESTIMATED BURDEN HOURS

Form/Activity	Estimated Total Respondents	Frequency	Total Annual Response	Average Time per Response (hours)	Total Annual Burden Hours	~~Hourly Rate for Data Entry Person~~	~~Total Annual Burden Cost~~
Participant Data Collection	72,000	Continual	45,000	2.66	119,700	~~$18.05~~	~~$2,160,585~~
Quarterly Narrative Progress Report	24	Quarterly	96	6	576	~~$18.05~~	~~$17,328~~
Quarterly Performance Report	24	Quarterly	96	10	960	~~$18.05~~	~~$XX~~
Totals	**72,048**	--	**45,192**	--	**121,236**	--	~~XX~~

Affected Public: YCC Grantees and program participants.

Form(s): Total Annual Respondents—24 grantees.

Annual Frequency: Quarterly.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

James H. Moore, Jr.,

Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2014–18181 Filed 7–31–14; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of the Trade Adjustment Assistance Community College Career Training (TAACCCT) Grants Program

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed ICR can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 30, 2014.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Erika Liliedahl, Chief Evaluation Office, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in

the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Erika Liliedahl by telephone at 202–693–5992 (this is not a toll-free number) or by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Adjustment Assistance Community College Career Training (TAACCCT) grants program provides community colleges and other eligible institutions of higher education with funds to expand and improve their ability to deliver education and career training programs that can be completed in two years or less and are suited for workers who are eligible for training under the Trade Adjustment Assistance for Workers program. TAACCCT-funded programs assist participants in acquiring the skills, degrees, and credentials needed employment while also meeting the needs of employers for skilled workers. A total of 185 grants have been awarded with 49 in fiscal year 2011 (''Round 1''), 79 in fiscal year 2012 (''Round 2''), and 57 in fiscal year 2013 (''Round 3'').

The purpose of the evaluation, funded by the Chief Evaluation Office, is to evaluate the national TAACCCT grants program, using a mixed-method design including outcome analysis, formal implementation analysis, performance assessment, and evaluability assessment. All Round 2 and 3 grantees and several Round 1 grantees have independent third-party evaluations. The national evaluator is collaborating with grantees and their evaluators and will provide a nationwide assessment of the overall initiative.

This package requests clearance for an online survey of all participating TAACCCT colleges and structured fieldwork in the form of site visits to 10 Round 2 and 10 Round 3 grantees.

The online survey is aimed at developing a comprehensive description of grant activities undertaken by participating TAACCCT colleges, as well as assessing the extent to which grantees have achieved the main goals under the initiative. Unlike the planned site visits to a small select group of TAACCCT grants, the online survey will provide an opportunity to collect responses to survey questions from all colleges that are a part of the 178 Round 1–3 TAACCCT grants.

There are two primary data sources for the structured fieldwork: Semi-structured interviews and focus groups. Interviews will be conducted with college administrators, program coordinators, faculty and instructional staff, industry and community partners, and employers. Field researchers will use a modular interview guide, organized by major topics that can be adapted based on the respondent's knowledge base, to prompt discussions on the approaches used and experiences of the grantees and stakeholders. In-person interviews will provide firsthand about the experiences of those involved in planning, implementing, and participating in the programs and the characteristics that contribute to success or lack of success in addressing and overcoming workforce challenges.

To understand the experiences and perspectives of the participants in the TAACCCT-funded activities, the research team will conduct focus groups of students at each site. Focus group questions will be open-ended and designed to elicit detailed responses. From the focus groups with program participants, researchers will learn about their perceptions regarding the training and service delivery approaches including, recruitment and orientation to the training or career path, supports provided before and after training, educational attainment and employment, and satisfaction with the training program.

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the above data collection for the national evaluation of the TAACCCT grants program. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

At this time, the Department of Labor is requesting clearance for data collection for the national evaluation of the TAACCCT grants program via survey and fieldwork efforts.

Type of review: New information collection request.

OMB Control Number: 1205–0NEW.

Affected Public: Students participating in and staff and partners associated with implementing TAACCCT grant programs.

Frequency: Once.

Total Responses: 1,440.

Average Time per Response: 76 minutes.

Estimated Total Burden Hours: 1,824 hours.

Total Other Burden Cost: $0.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

James H. Moore, Jr.,

Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2014–18179 Filed 7–31–14; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Institutional Analysis of American Job Centers (AJCs) Study

AGENCY: Office of the Assistant Secretary for Policy, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed ICR can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 30, 2014.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Erika Liliedahl, Chief Evaluation Office, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Erika Liliedahl by telephone at 202–693–5992 (this is not a toll-free number) or by email at *ChiefEvaluationOffice@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

When Congress overhauled the country's public workforce system with the Workforce Investment Act (WIA) in 1998, its paramount goal was to replace America's fragmented and inefficient patchwork of employment and training programs with a more streamlined and coordinated service delivery system. To that end, WIA required that local workforce investment boards (LWIBs) establish centers—now known as American Job Centers (AJCs)—to provide ''one-stop shopping'' for customers seeking employment information and access to jobs, training, and related services. While all AJCs provide employment related services, there is variation across centers in their organization, partnering arrangements, data reporting, funding, administration, and service delivery. The U.S. Department of Labor (DOL) is sponsoring a comprehensive study to better understand the spectrum of institutional features that shape AJCs' day-to-day operations and customer experiences.

The goals of the *Institutional Analysis of American Job Centers* (AJCs) study are to systematically document key institutional characteristics of AJCs; present a comprehensive description of AJC funding, organization, administration and management, and service delivery structures and processes; and develop typologies of AJCs that capture the institutional variations documented.

To achieve these goals, an in-depth institutional analysis will be conducted that systematically documents AJCs' operations across 10 research domains: (1) Administrative structure; (2) partnerships; (3) performance and strategic management; (4) staffing; (5) physical environment; (6) Management Information S system capacity and the use of technology, including electronic tools and resources; (7) service delivery structure and linkages; (8) the program and service mix provided; (9) outreach; and (10) funding. In addition, the study will consider external factors that are particularly important for understanding AJC structure, operations, policies, and processes. These include LWIBs and state-level workforce agencies that have administrative and oversight responsibilities over AJCs.

This package requests clearance for: (1) Site visits to AJCs; (2) telephone interviews with state workforce administrators in states where site visits are conducted; and (3) a network analysis survey of selected study AJC partner organizations.

The site visits include semi-structured interviews, and observations of center operations and client flow. Interviews with state workforce administrators in each state in which there is a selected AJC will be conducted to gather state-level information that is relevant for understanding local-level AJC organization and operations. A network analysis of AJC partnerships will be conducted based on a brief survey administered to a subset of the AJCs selected for site visits.

There are two primary data sources for the study: Semi-structured interviews and a survey. Semi-structured telephone interviews will be conducted with state workforce administrators. In-person interviews during the site visits will be conducted with AJC managers and key partner staff, AJC line staff, and LWIB staff; telephone interviews will be conducted in cases where an on-site meeting cannot be arranged. Field researchers will use a modular interview guide, organized by major topics that can be adapted based on the respondent's knowledge base, to prompt discussions on topics of interest to the study.

To better understand relationships between the AJC partners, the research team will supplement information about AJC partnerships obtained through semi-structured interviews with a network analysis survey of AJC partners that is distributed through email in the form of an editable PDF. The network analysis survey is a brief, targeted tool used to explore the strength of relationships between the key entities (partners) that oversee service delivery within the AJC framework as part of the overall effort to describe and analyze the institutional characteristics of the AJC system. The short survey will systematically collect information on select elements of partner interactions (frequency of communication, level of collaboration, and referral flow).

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the above data collection Institutional Analysis of American Job Centers. Comments are requested to:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

At this time, the Department of Labor is requesting clearance for data collection for the Institutional Analysis of AJCs via a survey and interviews.

Type of review: New information collection request.

OMB Control Number: 1205–0NEW.

Affected Public: Members of the public affected by the data collection include state and local government agencies, for-profit institutions, and not-for-profit institutions. Respondent groups identified include (1) State, regional, and local workforce agency and (2) AJC partners.

Frequency: Once.

Total Responses: 1,643.

Average Time per Response: 60 minutes.

Estimated Total Burden Hours: 1,643 hours.

Total Other Burden Cost: $0.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

James H. Moore, Jr.,

Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2014–18184 Filed 7–31–14; 8:45 am]

BILLING CODE 4510–23–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2014–03]

Music Licensing Study

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of extension of comment period.

SUMMARY: The United States Copyright Office is extending the deadline for public comments regarding the effectiveness of existing methods of licensing music that were solicited in a July 23, 2014 Notice of Inquiry. *See* 79 FR 42833 (July 23, 2014).

DATES: Written comments are now due on or before September 12, 2014.

ADDRESSES: All comments shall be submitted electronically. A comment page containing a comment form is posted on the Office Web site at *http://www.copyright.gov/docs/musiclicensingstudy*. The Web site interface requires commenting parties to complete a form specifying their name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: The Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office's Web site in the form that they are received, along with associated names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–8350 for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at *jcharlesworth@loc.gov* or by telephone at 202–707–8350; or Sarang V. Damle, Special Advisor to the General Counsel, by email at *sdam@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Copyright Office is conducting a study to assess the effectiveness of current methods for licensing sound recordings and musical works. The Office received written comments responding to an initial Notice of Inquiry, and held three public roundtables in Nashville, Los Angeles and New York. *See* 78 FR 13739 (Mar. 17, 2014); 79 FR 25626 (May 5, 2014).

On July 23, 2014, the Office published a second Notice of Inquiry, seeking additional written comments on ten subjects concerning the music licensing environment. 79 FR 42833. To ensure commenters have sufficient time to address the topics set forth in the July 2014 Notice of Inquiry, the Office is extending the time for filing written comments from August 22, 2014 to September 12, 2014.

Dated: July 28, 2014.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2014–18096 Filed 7–31–14; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2014–02]

Extension of Comment Period; Study on the Right of Making Available; Request for Additional Comments

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The U.S. Copyright Office is extending the deadline for public comments that address topics listed in the Office's July 15, 2014 Request for Additional Comments.

DATES: Comments are now due no later than 5:00 p.m. EDT on September 15, 2014.

ADDRESSES: All comments should be submitted electronically. To submit comments, please visit *http://www.copyright.gov/docs/making_available/*. The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (''MB'') in one of the following formats: a Portable Document File (''PDF'') format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (''RTF''); or ASCII text file format (not a scanned document). The form and face of the comments must include both the name of the submitter and organization. The Office will post all comments publicly on the Office's Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202–707–1027 for special instructions.

FOR FURTHER INFORMATION CONTACT: Maria Strong, Senior Counsel for Policy and International Affairs, by telephone at 202–707–1027 or by email at *mstrong@loc.gov,* or Kevin Amer, Counsel for Policy and International Affairs, by telephone at 202–707–1027 or by email at *kamer@loc.gov*.

SUPPLEMENTARY INFORMATION: On July 15, 2014, the Copyright Office issued a Request for Additional Comments on the state of U.S. law recognizing and protecting ''making available'' and ''communication to the public'' rights for copyright holders.[1] The Request listed several questions for interested members of the public to address in the context of U.S. implementation of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) rights of ''making available'' and ''communication to the public,'' and also invited views on specific issues raised during the public roundtable held in Washington, DC on May 5, 2014. To provide sufficient time for commenters to respond, the Office is extending the time for filing additional comments from August 14, 2014 to September 15, 2014.

Dated: July 28, 2014.

Karyn A. Temple Claggett,

Associate Register of Copyrights.

[FR Doc. 2014–18097 Filed 7–31–14; 8:45 am]

BILLING CODE 1410–30–P

[1] Study on the Right of Making Available; Request for Additional Comments, 79 FR 41309 (July 15, 2014).

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390; NRC–2013–0266]

Tennessee Valley Authority; Watts Bar Nuclear Plant Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Tennessee Valley Authority (TVA or the licensee) to withdraw its August 28, 2013, application for proposed amendment to Facility Operating License No. NPF–90 for Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee.

ADDRESSES: Please refer to Docket ID NRC–2013–0266 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0266. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Siva Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1564; email: *Siva.Lingam@nrc.gov.*

SUPPLEMENTARY INFORMATION: The proposed amendment would have modified the facility technical specifications (TSs) TS 3.8.4, ''DC [Direct Current] Sources-Operating,'' TS 3.8.5, ''DC Sources-Shutdown,'' and TS 3.8.6, ''Battery Cell Parameters.'' The request included changes consistent with both Technical Specifications Task Force (TSTF) change traveler TSTF–360, Revision 1, ''DC Electrical Rewrite'' (ADAMS Accession No. ML003778381), and TSTF–500, ''DC Electrical Rewrite—Update to TSTF–360'' (ADAMS Accession No. ML092670242), which provided an update to the changes approved in TSTF–360. However, the proposed TS changes were based on the TSTF–360 and TSTF–500 changes that were appropriate to the WBN Unit 1 design, because the direct current electrical power distribution system referenced in the model application is significantly different than the system that exists at Watts Bar. Because of this, TVA did not utilize the model application for TSTF–500, but rather provided plant-specific justifications for the related TSTF–500 changes that were proposed in this License Amendment Request. In addition to the TSTF–360 and TSTF–500 related changes, editorial and clarification changes to TS 3.8.4, 3.8.5, and 3.8.6 were proposed in this request.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 10, 2013 (78 FR 74186). However, by letter dated June 20, 2014 (ADAMS Accession No. ML14178B301), the licensee withdrew the proposed changes.

For further details with respect to this action, see the application for amendment dated August 28, 2013 (ADAMS Accession No. ML13248A250), and the licensee's letter dated June 20, 2014, which withdrew the application for license amendment.

Dated at Rockville, Maryland, this 24th day of July 2014.

For the Nuclear Regulatory Commission.

Siva P. Lingam,

Project Manager, Watts Bar Special Projects Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–18202 Filed 7–31–14; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: OPM 1655, Application for Senior Administrative Law Judge, and OPM 1655–A, Geographic Preference Statement for Senior Administrative Law Judge Applicant

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Administrative Law Judge Program Office, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an information collection request (ICR) 3206–0248, OPM 1655, *Application for Senior Administrative Law Judge,* and OPM 1655–A, *Geographic Preference Statement for Senior Administrative Law Judge Applicant.* OPM is soliciting comments for this collection under 44 U.S.C. 3506(c)(2) and 5 CFR 1320.8(d).

DATES: Comments are encouraged and will be accepted until September 30, 2014.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Administrative Law Judge Program Office, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Juanita H. Love, ALJ Program Manager or sent via electronic mail to *juanita.love@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Administrative Law Judge Program Office, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Juanita H. Love, ALJ Program Manager or sent via electronic mail to *juanita.love@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

OPM 1655, *Application for Senior Administrative Law Judge,* and OPM 1655–A, *Geographic Preference Statement for Senior Administrative Law Judge Applicant,* are used by retired Administrative Law Judges seeking reemployment on a temporary and intermittent basis to complete hearings of one or more specified case(s) in accordance with the Administrative Procedure Act of 1946. OPM proposes to revise the information collection to more clearly state, in the form instructions, the licensure requirement for appointment as an ALJ; to eliminate an obsolete reference to the OF 612, *Optional Application for Federal Employment,* which OPM canceled on June 13, 2011, *see* 76 FR 31998; to reference a full list of the Privacy Act routine uses applicable to this information collection; to update geographic locations; and to make technical changes to citations and terminology.

Analysis

Agency: Administrative Law Judge Program Office, Office of Personnel Management.

Title: OPM 1655, *Application for Senior Administrative Law Judge,* and OPM 1655–A, *Geographic Preference Statement for Senior Administrative Law Judge Applicant.*

OMB Number: 3206–0248.

Frequency: Annually.

Affected Public: Federal Administrative Law Judge Retirees.

Number of Respondents: Approximately 150—OPM 1655/ Approximately 200—OPM 1655–A.

Estimated Time per Respondent: Approximately 30–45 Minutes—OPM 1655/Approximately 15–25 Minutes—OPM 1655–A.

Total Burden Hours: Estimated 94 hours—OPM 1655/Estimated 67 hours—OPM 1655–A.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–18187 Filed 7–31–14; 8:45 am]

BILLING CODE 6325–43–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31189; File No. 812–14196]

Altegris Advisors L.L.C. and Northern Lights Fund Trust; Notice of Application

July 28, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements. The order would supersede a prior order.[1]

APPLICANTS: Altegris Advisors L.L.C. (the ''Adviser'') and Northern Lights Fund Trust (the ''Trust'').

FILING DATES: The application was filed on August 5, 2013 and amended on March 17, 2014, April 17, 2014, and July 11, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 21, 2014, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Adviser, 1200 Prospect Street, Suite 400, La Jolla CA 92037; Trust: 17065 Wright Street, Suite 2, Omaha, NE 68130.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and is comprised of multiple series, each with its own investment, objectives and policies.[2] The Adviser is a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as the investment adviser to the Funds pursuant to investment advisory agreements (''Advisory Agreements'') with the Trust. The Advisory Agreements were approved by the Trust's board of trustees (together with the board of directors or trustees of any other Fund, the ''Board''),[3] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees'') and by the shareholders of the relevant Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. Applicants are not seeking any exemptions from the provisions of the Act with respect to any Advisory Agreement.

2. Under the terms of the Advisory Agreements, each Adviser, subject to the oversight of the applicable Board, is

[1] Altegris Advisors, L.L.C. et al., Investment Company Act Rel. Nos. 29689 (June 1, 2011) (notice) and 29710 (June 28, 2011) (order).

[2] Altegris Managed Futures Strategy Fund (the ''MF Fund''), Altegris Macro Strategy Fund (the ''MS Fund''), Altegris Futures Evolution Fund (the ''FE Fund''), Altegris Equity Long Short Fund (the ''ELS Fund''), Altegris Fixed Income Long Short Fund (the ''FILS Fund''), Altegris Multi-Strategy Alternative Fund (the ''MSA Fund''), and the Altegris/AACA Real Estate Long Short Fund (the ''RELS'' Fund'') are the only Funds (defined below) that currently intend to rely on the requested order. Applicants request relief with respect to existing and future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser; (b) uses the manager of managers structure (''Manager of Managers Structure'') described in the application; and (c) complies with the terms and conditions of the application (together with the MF Fund, the MS Fund, FE Fund, ELS Fund, the FILS Fund, the MSA Fund, and the RELS Fund, the ''Funds'' and each, individually, a ''Fund.''). If the name of any Fund contains the name of a Sub-Adviser, the name of the Adviser will precede the name of the Sub-Adviser.

[3] The term ''Board'' also includes the board of trustees of a future Fund.

responsible for the overall management of the Funds' business affairs and selecting the Funds' investments according to the Funds' investment objectives, policies, and restrictions. For the investment advisory services that they provide to the Funds, the Advisers receive a fee from the Funds as specified in the Advisory Agreements. The Advisory Agreements also authorize the Advisers to retain one or more unaffiliated investment subadvisers (each, a ''Sub-Adviser''), to be compensated by the Advisers for the purpose of managing the investment of the assets of the Funds. The Advisers have entered into subadvisory agreements (''Sub-Advisory Agreements'') with various Sub-Advisers to provide investment advisory services to certain Funds.[4] Each Sub-Adviser is, and each future Sub-Adviser will be, an ''investment adviser,'' as defined in section 2(a)(20)(B) of the Act, and registered as an investment adviser under the Advisers Act, or not subject to such registration. The Advisers will evaluate, allocate assets to, and oversee the Sub-Advisers, and make recommendations about their hiring, termination, and replacement to the applicable Board, at all times subject to the authority of that Board. The Adviser compensates each Sub-Adviser out of the fee paid by a Fund to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Advisers, subject to Board approval, to engage Sub-Advisers to manage all or a portion of the assets of a Fund pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as Sub-Adviser to a Fund (''Affiliated Sub-Adviser'').

4. Applicants also request an order exempting each Fund from certain disclosure provisions described below that may require the Funds to disclose fees paid by the Advisers to each Sub-Adviser. Applicants seek an order to permit each Fund to disclose (as both a dollar amount and as a percentage of a Fund's net assets) only: (a) The aggregate fees paid to its Adviser and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, the ''Aggregate Fee Disclosure''). A Fund that employs an Affiliated Sub-Adviser will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

5. The Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Fund, that Fund will send its shareholders either a Multi-Manager Notice or a Multi-Manager Notice and Multi-Manager Information Statement; [5] and (b) the Fund will make the Multi-Manager Information Statement available on the Web site identified in the Multi-Manager Notice no later than when the Multi-Manager Notice (or Multi-Manager Notice and Multi-Manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect each Fund's Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are best suited to achieve the Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose unnecessary delays and expenses on the Funds, and may preclude a Fund from acting promptly when the applicable Board and Adviser believe that a change would benefit the Fund and its shareholders. Applicants note that the Advisory Agreements and any Sub-Advisory Agreement with an Affiliated Sub-Adviser (if any) will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. Applicants assert that the requested disclosure relief would benefit shareholders of the Funds because it would improve the Advisers' ability to negotiate the fees paid to Sub-Advisers.

[4] All Sub-Advisory Agreements comply with sections 15(a) and (c) of the Act.

[5] A ''Multi-Manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-Manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-Manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-Manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-Manager Information Statement may be obtained, without charge, by contacting the Funds. A ''Multi-Manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-Manager Information Statements will be filed electronically with the Commission via the EDGAR system.

Applicants state that the Advisers may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts, if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the requested relief will encourage Sub-Advisers to negotiate lower subadvisory fees with the Advisers if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities as defined in the 1940 Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Fund's shares are offered to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent Legal Counsel, as defined in Rule 0–1(a)(6) under the 1940 Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

8. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

9. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

10. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will: (a) Set the Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to manage all or a part of the Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among Sub-Advisers; (d) monitor and evaluate the investment performance of Sub-Advisers; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Fund's investment objectives, policies, and restrictions.

11. No Trustee or officer of the Trust or of a Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event that the Commission adopts a rule under the 1940 Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

14. Any new Sub-Advisory Agreement or any amendments to a Fund's existing Advisory Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Fund will be submitted to the Fund's shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18129 Filed 7–31–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72693]

Order Granting a Limited Exemption From Rule 102 of Regulation M Concerning the BATS Exchange, Inc.'s Pilot Supplemental Competitive Liquidity Provider Program

July 28, 2014.

The Securities and Exchange Commission (''Commission'') approved a proposed rule change of the BATS Exchange, Inc. (''Exchange'' or ''BATS'') to add new Interpretation and Policy .03 to Rule 11.8 (''New IP .03'') which establishes the Supplemental Competitive Liquidity Provider (''CLP'') Program (''CLP Program'' or ''Program'') effective for one year on a pilot basis (the ''pilot''). The CLP Program permits certain market makers to become CLPs (''ETP CLPs'') in exchange-traded products (''ETPs'').[1] The Exchange states that the CLP Program is designed to incentivize quoting volume in certain ETPs by providing credit to CLPs for certain market making activity.[2] Participating issuers (or sponsors on behalf of the issuer) fund the Program by paying non-refundable ''CLP Fees,'' which are then credited to the Exchange's general revenues.[3] The

[1] *See* New IP .03(f) (establishing the qualifications to be a CLP); *see also* Securities Exchange Act Release No. 72692 (July 28, 2014) (SR–BATS 2014–022) (''Approval Order'') (providing more details regarding the Program).

[2] *See* Approval Order. The Approval Order contains a detailed description of the Program. The proposed rule change was published for comment in the **Federal Register** on June 13, 2014. Securities Exchange Act Release No. 72346 (Jun. 9, 2014), 79 FR 33982 (Jun. 13, 2014). The Approval Order grants approval of the proposed rule change.

[3] The program is similar to other programs, such as NYSE Arca's ''ETP Incentive Program'' and NASDAQ Stock Market LLC's ''Market Quality Program,'' designed to permit ETP issuers to pay incentives to those who make markets in their ETPs. *See* Securities Exchange Act Release No. 69706 (June 6, 2013); 78 FR 35340 (June 12, 2013) (NYSEArca 2013–34) and Securities Exchange Act Release No. 69195 (Mar. 20, 2013); 78 FR 18393 (Mar. 26, 2013) (NASDAQ 2012–137); *see also* Securities Exchange Act Release No. 69707 (June 6, 2013); 78 FR 35330 (June 12, 2013) (approving a

Continued

Commission believes that payment of the CLP Fee by the issuer (or a sponsor on behalf of the issuer) for the purpose of incentivizing market makers to participate as a CLP in the issuer's otherwise less liquid securities would constitute an indirect attempt by the issuer to induce a bid for or a purchase of a covered security during a restricted period.[4] As a result, absent exemptive relief, participation in the CLP Program by an issuer (or sponsor on behalf of the issuer) would violate Rule 102 of Regulation M.[5] This order grants a limited exemption from Rule 102 of Regulation M solely to permit issuers and sponsors to participate in the Program during the pilot, subject to certain conditions described below.

BATS stated that the CLP Program is designed to incentivize market makers to quote in certain ETPs.[6] An issuer of an ETP that participates in the CLP Program would elect to pay a CLP Fee to BATS in an amount ranging from $10,000 to $100,000 per year, with the actual amount above $10,000 to be determined by the issuer.[7] The CLP Fee is in addition to the current standard listing fee applicable to the ETP and is paid by the issuer to the Exchange's general revenues.[8] Subject to the requirements set forth in New IP .03, the amount of a total daily payment available to CLPs (''CLP Rebate'') will be equal to one quarter of the total annual CLP Fees (basic and supplemental combined) for the security participating in the Program (''CLP Security'') divided by the number of trading days in the current quarter.[9] If no CLP is eligible to receive a CLP Rebate because the CLP Program performance standards were not met by any CLP, no CLP would receive a CLP Rebate.[10] The voluntary Program established by New IP .03 will be effective for one year on a pilot basis.[11]

The Exchange will provide notification on its Web site regarding the following: (i) Acceptance of a CLP Company,[12] on behalf of a CLP Security, or a CLP into the Program; (ii) the total number of CLP Securities that any one CLP Company may have in the Program; (iii) the names of CLP Securities and the CLP(s) in each CLP Security, the dates that a CLP Company, on behalf of a CLP Security, commences participation in and withdraws or is terminated from the Program, and the name of each CLP Company and its associated CLP Security or Securities; (iv) a statement about the Program that sets forth a general description of the Program as implemented on a pilot basis and a fair and balanced summation of the potentially positive aspects of the Program (*e.g.,* enhancement of liquidity and market quality in CLP Securities) as well as the potentially negative aspects and risks of the Program (*e.g.,* possible lack of liquidity and negative price impact on CLP Securities that are withdrawn or are terminated from the Program), and indicates how interested parties can get additional information about CLP Securities in the Program; and (v) the intent of a CLP Company, on behalf of a CLP Security, or the CLP to withdraw from the Program, and the date of actual withdrawal or termination from the Program.[13] In addition, a CLP Company that, on behalf of a CLP Security, is approved to participate in the Program shall issue a press release to the public when the CLP Company, on behalf of a CLP Security, commences or ceases participation in the Program.[14] The press release shall be in a form and manner prescribed by the Exchange, and, if practicable, shall be issued at least two days before commencing or ceasing participation in the Program.[15] The CLP Company shall dedicate space on its Web site, or, if it does not have a Web site, on the Web site of the Sponsor of the CLP Security, which space will (i) include any such press releases, and (ii) provide a hyperlink to the dedicated page on the Exchange's Web site that describes the Program.[16]

The Commission received no comments on the proposal.[17] However, certain commenters expressed concerns about similar ETP Incentive and Market Quality Programs,[18] including the departure from rules precluding market makers from directly or indirectly accepting payment from an issuer of a security for acting as a market maker.[19] In particular, commenters to those similar proposals discussed the potential distortive impact on the natural market forces of supply and demand.[20] Commenters to those proposals also discussed what they viewed as the failure of those programs, as originally conceived, to adequately mitigate their potential negative impacts.[21]

For example, one commenter stated that ''[i]ssuer payments to market makers have the potential to distort market forces, resulting in spreads and prices that do not reflect actual supply and demand.'' [22] Another commenter

limited exemption from Rule 102 of Regulation M concerning NYSE Arca's ETP Incentive Program Pilot); Securities Exchange Act Release No. 69196 (Mar. 20, 2013); 78 FR 18410 (Mar. 26, 2013) (approving a limited exemption from Rule 102 of Regulation M concerning NASDAQ Stock Market LLC's Market Quality Program Pilot); and Securities Exchange Act Release No. 71805 (Mar. 26, 2014); 78 FR 18365 (Apr. 1, 2014) (approving a limited exemption from Rule 102 of Regulation M concerning NYSE Arca's Crowd Participant Program Pilot).

[4] *See* Securities Exchange Act Release No. 67411 (July 11, 2012), 77 FR 42052 (July 17, 2012) (stating that ''[t]he Commission believes that issuer payments made under the [similar ETP Incentive and Market Quality Programs] would constitute an indirect attempt by the issuer of a covered security to induce a purchase or bid in a covered security during a restricted period in violation of Rule 102'' and that ''[u]nder the [similar ETP Incentive Program], the purpose of the Program is 'to create [an incentive program] for issuers of certain ETPs listed' on NYSE Arca, which . . . could induce bids or purchases for the issuer's security during a restricted period''). Similarly, the issuer pays for the Program for the stated purpose of incentivizing market makers to quote in certain ETPs, which also could induce bids or purchases for the issuer's security during a restricted period. *See* Approval Order.

[5] 17 CFR 242.102.

[6] *See* Approval Order.

[7] *See* Approval Order.

[8] *Id.*

[9] *Id.; see also* New IP .03(m)(1). In the Approval Order, the following example is provided: Where the total CLP Fees for a CLP Security is $64,000 and there are 64 trading days in the current quarter, the total CLP Rebate for the CLP Security would be $250 (($64,000/4)/64).

[10] *See* Approval Order.

[11] New IP .03(p).

[12] CLP Company is defined in New IP .03(b)(2) as ''the trust or company housing the ETP or, if the ETP is not a series of a trust or company, then the ETP itself. . . .''

[13] *See* New IP .03(o).

[14] *See* New IP .03(d)(4).

[15] *Id.*

[16] *Id.*

[17] *See* Approval Order.

[18] *See* note 3, *supra.*

[19] *See, e.g.,* Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated June 7, 2012 (citing to his comment letter regarding the similar NASDAQ Market Quality Program, in which he stated, ''The additional factor of payments by an issuer to a market maker would probably be viewed as a conflict of interest since it would undoubtedly influence, to some degree, a firm's decision to make a market and thereafter, perhaps, the prices it would quote. Hence, what might appear to be independent trading activity may well be illusory.''). In addition, another commenter noted ''that market maker incentive programs, such as the [NYSE Arca ETP Incentive Program], represent a departure from the current rules precluding market makers from accepting payment from an issuer of a security for acting as a market marker'' yet supported the concept of market maker incentive programs on a pilot basis. Letter from Ari Burstein, Investment Company Institute (''ICI''), dated June 7, 2012. In a subsequent letter, however, the same commenter noted that certain of its members opposed the Program as originally proposed and stated that it ''could create a 'pay-to-play' environment.'' Letter from Ari Burstein, ICI, dated Aug. 16, 2012. The Approval Order also notes that a number of aspects of the Program mitigate the concerns that the rule in question, FINRA Rule 5250 (Payments for Market Making), were designed to address.

[20] *See, e.g.,* Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated Aug. 16, 2012.

[21] *See, e.g.,* Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated June 7, 2012.

[22] Letter from F. William McNabb, Chairman and Chief Executive Officer, Vanguard, dated Aug. 16, 2012.

questioned whether any safeguards could alleviate their concerns regarding issuer payments to market makers.[23] Another commenter questioned whether information relating to the similar Market Quality Program posted to that exchange's Web site in a similar manner as required in New IP .03 by BATS would adequately address investor protection and market integrity concerns because investors may not search an exchange Web site for important information about a particular ETP.[24]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such persons, directly or indirectly, from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security [25] during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, except as specifically permitted in the rule.[26] As mentioned above, the Commission believes that the payment of the CLP Fee would constitute an indirect attempt to induce a bid for or purchase of a covered security during the applicable restricted period.[27] As a result, absent exemptive relief, participation in the Program by a sponsor or issuer would violate Rule 102.

On the basis of the conditions set out below and the requirements set forth in New IP .03, which in general are designed to help inform investors about the potential impact of the Program, the Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant a limited exemption from Rule 102 of Regulation M solely to permit the payment of the CLP Fee as set forth in New IP .03 during the pilot.[28] This limited exemption is conditioned on a requirement that the security participating in the Program is an ETP and the secondary market price for shares of the ETP must not vary substantially from the net asset value of such ETP shares during the duration of the ETP's participation in the Program. This condition is designed to limit the Program to ETPs that have a pricing mechanism that is expected to keep the price of the ETP shares tracking the net asset value of the ETP shares, which should make the shares less susceptible to price manipulation.

This limited exemption is further conditioned on disclosure requirements, as set forth below, which are designed to alert potential investors that the trading market for the otherwise less liquid securities in the Program may be affected by participation in the Program. By making it easier for investors to be able to distinguish which quotations may have been influenced by the CLP Fee from those that have not, and by requiring the issuers and sponsors to provide information on the potential effect of Program participation on the price and liquidity of a security participating in the Program, the required enhanced disclosure requirements are designed to inform potential investors about the potential distortive impact of the CLP Fee on the natural market forces of supply and demand. The general disclosures required by New IP .03, while helpful, may not be sufficient to obtain this result.[29] The required enhanced disclosures are expected to promote greater investor protection by helping to ensure that investors will have easier access to important information about a particular ETP.[30]

As a practical matter, these requirements are not intended to be duplicative with the issuer disclosures required by New IP .03. These requirements can be satisfied via the press release and dedicated Web page required by New IP .03(d)(4), however, these materials must contain all the required disclosures outlined below, and be in the manner stated in the condition, in addition to any requirements of the Exchange. Issuers or sponsors of products that are not registered under the Investment Company Act of 1940, as amended (''1940 Act''), may also meet the press release requirements of these enhanced disclosures in a manner compliant with Regulation FD (other than Web site only disclosure).[31] We also note that, to the extent that information about participation in the Program is material, disclosure of this kind may already be required by the federal securities laws and rules.

Conclusion

It is therefore ordered, that issuers or sponsors who pay a CLP Fee are hereby exempted from Rule 102 of Regulation M solely to permit the payment of the CLP Fee as set forth in New IP .03 in connection with a security participating in the Program during the pilot, subject to the conditions contained in this order and compliance with the requirements of New IP .03.

This exemption is subject to the following conditions:

1. The security participating in the Program is an ETP and the secondary market price for shares of the ETP must not vary substantially from the net asset value of such ETP shares during the duration of the security's participation in the Program;

2. The issuer of the participating ETP, or sponsor on behalf of the issuer, must provide prompt notice to the public by broadly disseminating a press release prior to entry (or upon re-entry) into the Program. This press release must disclose:

a. The payment of a CLP Fee is intended to generate more quotes and trading than might otherwise exist absent this payment, and that the security leaving the Program may adversely impact a purchaser's subsequent sale of the security; and

b. A hyperlink to the Web page described in condition (5) below;

3. The issuer of the participating ETP, or sponsor on behalf of the issuer, must provide prompt notice to the public by broadly disseminating a press release prior to a security leaving the Program for any reason, including termination of

[23] Letter from Ari Burstein, ICI, dated Aug. 16, 2012 (stating that ''ICI members who oppose the Programs believe any fixes to the proposed parameters will be insufficient to address their overall concerns with market maker incentive programs'').

[24] Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated (May 3, 2012) (asking whether it is likely that investors would consult NASDAQ's Web site for information about which ETFs and market makers are participating in the NASDAQ Market Quality Program given what is known about investor behavior and, if not, asserting that ''most investors would not be able to distinguish quotations that reflect true market forces from quotations that have been influenced by issuer payments'').

[25] Covered security is defined as any security that is the subject of a distribution, or any reference security. 17 CFR 242.100(b).

[26] 17 CFR 242.102(a).

[27] *See* note 3, *supra.*

[28] Rule 102(e) allows the Commission to grant an exemption from the provision of Rule 102, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

[29] New IP .03(d)(4) does not contain any specific content requirements for issuer or sponsor disclosure, other than a ''press release'' when entering or leaving the Program and a hyperlink on a dedicated issuer, advisor, or sponsor's Web page to the Exchange's Web site that contains a number of specific disclosures about the program. As outlined below, the enhanced disclosures required of the issuer or sponsor as conditions to this order require that the issuer's or sponsor's press release and Web page directly contain a number of helpful disclosures for investors, including risks of the program.

[30] The required Web site and press release disclosures should be less burdensome than other methods of notifying investors of a security's participation in the Program, such as requiring a ticker symbol identifier or flagging participating CLP quotes and trades.

[31] *See* condition (4), *infra.*

the Program. This press release must disclose:

a. The date that the security is leaving the Program and that leaving the Program may have a negative impact on the price and liquidity of the security which could adversely impact a purchaser's subsequent sale of the security; and

b. A hyperlink to the Web page described in condition (5) below;

4. In place of the press releases required by conditions (2) and (3) above, an issuer of a participating ETP that is not registered under the 1940 Act, or sponsor on behalf of the issuer, may provide prompt notice to the public through the use of such other written Regulation FD compliant methods (other than Web site disclosure only) that is designed to provide broad public dissemination as provided in 17 CFR 243.101(e), *provided, however,* that such other methods must contain all the information required to be disclosed by conditions (2) and (3) above;

5. The issuer of the participating ETP, or sponsor on behalf of the issuer, must provide prompt, prominent and continuous disclosure on its Web site in the location generally used to communicate information to investors about a particular security participating in the Program, and for a security that has a separate Web site, the security's Web site of:

a. The security participating in the Program and ticker, date of entry into the Program, and the amount of the CLP Fee;

b. Risk factors investors should consider when making an investment decision, including that participation in the Program may have potential impacts on the price and liquidity of the security; and

c. Termination date of the pilot, anticipated date (if any) of the security leaving the Program for any reason, date of actual exit (if applicable), and that the security leaving the Program could adversely impact a purchaser's subsequent sale of the security; and

6. The Web site disclosure in condition (5) above must be promptly updated if a material change occurs with respect to any information contained in the disclosure.

This exemptive relief expires when the pilot terminates, and is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemptive relief is limited solely to the payment of the CLP Fee as set forth in New IP .03 for a security that is an ETP participating in the Program,[32] and does not extend to any other activities, any other security of the trust related to the participating ETP, or any other issuers.[33] In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order does not represent Commission views with respect to any other question that the proposed activities may raise, including, but not limited to the adequacy of the disclosure required by federal securities laws and rules, and the applicability of other federal or state laws and rules to, the proposed activities.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18128 Filed 7–31–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72679; File No. SR–NYSEArca–2014–71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposing To List and Trade Shares of Treesdale Rising Rates ETF Under NYSE Arca Equities Rule 8.600

July 28, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 14, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Treesdale Rising Rates ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:[4] Treesdale Rising Rates ETF (''Fund'').[5] The Shares

[32] All ETPs that are allowed to participate in the Program have a pool of underlying assets. *See* New Rule 7.25(b)(2). Should the Program be modified to include other ETPs, such as exchange-traded notes, that do not have a pool of underlying assets, the Commission would consider this a material change and outside the scope of this exemptive relief.

[33] Other activities, such as ETP redemptions, are not covered by this exemptive relief.

[34] 17 CFR 200.30–3(a)(6).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR–NYSEArca–2013–33) (order approving Exchange listing and trading of International Bear ETF); 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR–NYSEArca–2013–01) (order approving Exchange listing and trading of Newfleet Multi-Sector Income ETF); and 67277 (June 27, 2012), 77 FR 39554 (July 3, 2012) (SR–NYSEArca–2012–39) (order approving

will be offered by AdvisorShares Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Securities and Exchange Commission (the ''Commission'') as an open-end management investment company.[6] The investment adviser to the Fund is AdvisorShares Investments, LLC (the ''Adviser''). The sub-adviser to the Fund is Treesdale Partners, LLC (''Sub-Adviser''), which will provide day-to-day portfolio management of the Fund. Foreside Fund Services, LLC (the ''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon (the ''Administrator'') serves as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is a broker-dealer or is affiliated with a broker-dealer. In the event (a) the Adviser or Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

According to the Registration Statement, the Fund will seek to generate current income while providing protection for investors against loss of principal in a rising interest rate environment.

According to the Registration Statement, the Fund will be actively managed and thus will not seek to replicate the performance of a specified passive index of securities. Instead, it will use an active investment strategy to seek to meet its investment objectives. The Sub-Adviser, subject to the oversight of the Adviser and the Board of Trustees, will have discretion on a daily basis to manage the Fund's portfolio in accordance with the Fund's investment objectives and investment policies.

According to the Registration Statement, the Fund will seek to achieve its investment objectives by investing, under normal circumstances,[8] at least 80% of its net assets in positions in agency interest-only collateralized mortgage obligations (''CMOs''), interest-only swaps (''IOS'') that reference interest only cash flows from agency mortgage-backed securities (''MBS'') pools with certain coupons and specified origination periods (''Agency MBS IOS''), interest rate swaps, U.S. Treasury obligations, including U.S. Treasury zero-coupon bonds, and U.S. Treasury futures.[9] Under normal circumstances, the Sub-Adviser will seek to generate enhanced returns in an environment of rising interest rates by investing in agency interest-only CMOs and Agency MBS IOS to maintain a negative portfolio duration with a generally positive current yield. Under normal circumstances, the Fund will utilize the U.S. Treasury obligations, U.S. Treasury futures and interest rate swaps, which are liquid interest rate products, to manage duration risks. Aside from Treasury futures, which will be exchange traded,[10] all the Fund's principal investments will be U.S. dollar-denominated and traded over the counter (''OTC'').

According to the Adviser, the mortgage-backed securities market, which includes interest-only CMOs, is the largest sector of the U.S. fixed income markets. It is diverse, with both highly liquid instruments as well as less liquid products. The primary focus of the Fund will be on the Agency MBS IOS sector, where liquidity is provided by multiple market makers that actively make two-sided markets. Additionally, Markit publishes daily closing prices based on dealer marks. Pricing in this market is transparent and provided by major market makers. The Agency MBS IOS are analogous to interest-only CMOs in swap form with differences in the composition of underlying MBS collateral. IOS are total rate of return swaps.

According to the Registration Statement, the Agency MBS IOS and

Exchange listing and trading of the Global Alpha & Beta ETF).

[6] The Trust is registered under the 1940 Act. On September 4, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] According to the Registration Statement, CMOs are debt obligations of a legal entity that are collateralized by mortgages and divided into classes. Futures contracts provide for the future sale by one party and purchase by another party of a specified amount of a specific security at a specified future time and at a specified price. The Fund will only use futures contracts that have U.S. Treasury securities and interest rate swaps as their underlying reference assets.

[10] The futures in which the Fund may invest will trade on markets that are members of the Intermarket Surveillance Group (''ISG'') or that have entered into a comprehensive surveillance agreement with the Exchange.

agency interest-only CMOs in which the Fund will invest are intended to provide significant negative duration exposure and will generally benefit from rising interest rates.[11] The overall duration of the Fund's portfolio will generally range from −5 to −15 years. Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates. A portfolio with negative duration generally incurs a loss when interest rates and yields fall. To counter the impact of such potential losses, the Fund's negative duration may be partly offset with long positions in U.S. Treasury obligations, interest rate swaps and other positive duration products.

According to the Registration Statement, in determining the Fund's investment allocations, the Sub-Adviser will perform both top-down and security specific analysis. The overall negative duration target and allocation to specific subsectors of the mortgage interest-only market will be based on high-level macro and relative value analysis across fixed income markets. Using these targets, allocations to individual positions will be made based on detailed value analysis. Liquid U.S. Treasury obligations and interest rate swaps will be used to adjust the portfolio to certain negative duration targets. While such U.S. Treasury and interest rate swap hedges may be rebalanced daily, the portfolio of Agency MBS IOS and agency interest-only CMOs will be less frequently rebalanced.

According to the Registration Statement, agency CMOs, including agency interest-only CMOs, are typically collateralized by portfolios of mortgage pass-through securities guaranteed by the Government National Mortgage Association (''Ginnie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac''), or Federal National Mortgage Association (''Fannie Mae''), and the income payments on such securities.[12] CMOs, including agency interest-only CMOs, are structured into multiple classes, often referred to as ''tranches,'' with each class bearing a different stated maturity and entitled to a different schedule for payments of principal and interest, including pre-payments.

The agency interest-only CMOs that the Fund may invest in include agency stripped mortgage-backed securities (''SMBS'').[13] According to the Registration Statement, as CMOs have evolved, some classes of CMO bonds have become more common. For example, the Fund may invest in agency interest-only parallel-pay and planned amortization class (''PAC'') CMOs and agency interest-only multi-class pass through certificates.[14] Any CMO or multi-class pass through structure that includes PAC securities must also have support tranches—known as support bonds, companion bonds or non-PAC bonds—which lend or absorb principal cash flows to allow the PAC securities to maintain their stated maturities and final distribution dates within a range of actual prepayment experience. Consistent with the Fund's investment objectives and policies, the Sub-Adviser may invest in various tranches of agency interest-only CMO bonds, including support bonds.

According to the Registration Statement, the Fund may enter into interest rate swaps. The Fund may utilize swap agreements in an attempt to gain exposure to the securities in a market without actually purchasing those securities, or to hedge a position. Swap agreements are two-party contracts entered into primarily by institutional investors for periods ranging from a day to more than one-year. In a standard ''swap'' transaction, two parties agree to exchange the returns (or differentials in rates of return) earned or realized on particular predetermined investments or instruments. The gross returns to be exchanged or ''swapped'' between the parties are calculated with respect to a ''notional amount,'' i.e., the return on or increase in value of a particular dollar amount invested in a ''basket'' of securities representing a particular index.

According to the Registration Statement, the Fund's obligations under a swap agreement will be accrued daily (offset against any amounts owing to the Fund) and any accrued but unpaid net amounts owed to a swap counterparty will be covered by segregating assets determined to be liquid. The Fund will not enter into any swap agreement unless the Adviser believes that the other party to the transaction is creditworthy.[15]

According to the Registration Statement, the Fund may enter into swap agreements to invest in a market without owning or taking physical custody of the underlying securities in circumstances in which direct investment is restricted for legal reasons or is otherwise impracticable.

According to the Registration Statement, the Fund intends to invest in U.S. Treasury securities and U.S. Treasury futures. U.S. Treasury securities are backed by the full faith and credit of the U.S. Treasury and differ only in their interest rates, maturities, and times of issuance. The Fund may invest in U.S. Treasury zero-coupon bonds. These securities are U.S. Treasury bonds which have been stripped of their unmatured interest coupons, the coupons themselves, and receipts or certificates representing interests in such stripped debt obligations and coupons. Interest is not paid in cash during the term of these securities, but is accrued and paid at maturity.

[11] According to the Adviser, negative duration reflects price sensitivity to interest rate changes that is the inverse of how standard bond instruments behave. Specifically, negative duration instruments generally appreciate in price as interest rates rise.

[12] According to the Registration Statement, Ginnie Mae, a wholly owned United States Government corporation, is one of the principal governmental guarantor [sic] of mortgage-related securities, such as agency CMOs. Ginnie Mae is authorized to guarantee, with the full faith and credit of the United States Government, the timely payment of principal and interest on securities issued by institutions approved by Ginnie Mae and backed by pools of mortgages insured by the Federal Housing Administration (the ''FHA''), or guaranteed by the Department of Veterans Affairs (the ''VA''). Government-related guarantors (i.e., not backed by the full faith and credit of the United States Government) include the government-sponsored corporations Fannie Mae and Freddie Mac. Pass-through securities issued by Fannie Mae are guaranteed as to timely payment of principal and interest by Fannie Mae, but are not backed by the full faith and credit of the United States Government.

[13] According to the Registration Statement SMBS are derivative multi-class mortgage securities. SMBSs may be issued by agencies or instrumentalities of the U.S. government, or by private originators of, or investors in, mortgage loans, including savings and loan associations, mortgage banks, commercial banks, investment banks and special purpose entities of the foregoing. SMBSs are usually structured with two classes that receive different proportions of the interest and principal distributions on a pool of mortgage assets.

[14] According to the Registration Statement, parallel-pay CMOs and multi-class pass-through certificates are structured to provide payments of principal on each payment date to more than one class. PACs generally require payments of a specified amount of principal on each payment date. PACs are parallel-pay CMOs with the required principal amount on such securities having the highest priority after interest has been paid to all classes.

[15] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced. The Adviser's Execution Committee will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's analysts will evaluate each approved counterparty using various methods of analysis, including the counterparty's liquidity in the event of default, the broker-dealer's reputation, the Adviser's past experience with the broker-dealer, the Financial Industry Regulatory Authority's (''FINRA'') BrokerCheck and disciplinary history and its share of market participation.

Other Investments

While the Fund's principal investments, under normal circumstances,[16] will be as described above, the Fund may invest the balance of its assets in the investments described below.

According to the Registration Statement, the Fund may invest in other mortgage-related securities in addition to the agency interest-only CMOs described above. Such mortgage-related securities are securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. More specifically, the Fund may hold MBS, mortgage dollar rolls,[17] CMO residuals,[18] and equity or debt securities issued by agencies or instrumentalities of the U.S. government or by private originators of, or investors in, mortgage loans, including savings and loan associations homebuilders, mortgage banks, commercial banks, investment banks, partnerships, trusts, and special purpose entities of the foregoing. In addition to the agency interest-only CMOs described above, the MBS that the Fund will invest in are other agency CMOs, non-agency CMOs (including non-agency SMBS) and Adjustable Rate Mortgage Backed Securities (''ARMBS'').

According to the Registration Statement, such mortgage-related securities include privately issued mortgage-related securities, where issuers create pass-through pools of conventional residential mortgage loans.[19] Timely payment of interest and principal of these pools may be supported by various forms of insurance or guarantees, including individual loan, title, pool and hazard insurance and letters of credit, which may be issued by governmental entities or private insurers. The Fund may buy mortgage-related securities without insurance or guarantees if, through an examination of the loan experience and practices of the originators/servicers and poolers, the Sub-Adviser determines that the securities meet the Trust's investment quality standards. Privately issued mortgage-related securities are not traded on an exchange. The Fund may purchase privately issued mortgage-related securities that are originated, packaged and serviced by third party entities.

According to the Registration Statement, the Fund may invest in asset-backed securities (''ABSs''), which are bonds backed by pools of loans or other receivables. ABSs are created from many types of assets, including auto loans, credit card receivables, home equity loans, and student loans. ABSs are issued through special purpose vehicles that are bankruptcy remote from the issuer of the collateral. According to the Registration Statement, the Fund may invest in each of collateralized bond obligations (''CBOs''), collateralized loan obligations (''CLOs''), other collateralized debt obligations (''CDOs'') and other similarly structured securities. CBOs, CLOs and other CDOs are types of ABS. A CBO is a trust which is often backed by a diversified pool of high risk, below investment grade fixed income securities. The collateral can be from many different types of fixed income securities such as high yield debt, residential privately issued mortgage-related securities, commercial privately issued mortgage-related securities, trust preferred securities and emerging market debt. A CLO is a trust typically collateralized by a pool of loans, which may include, among others, domestic and foreign senior secured loans, senior unsecured loans, and subordinate corporate loans, including loans that may be rated below investment grade or equivalent unrated loans. Other CDOs are trusts backed by other types of assets representing obligations of various parties. Normally, CBOs, CLOs and other CDOs are privately offered and sold, and thus, are not registered under the securities laws.

According to the Adviser, the Fund will limit investments in ABS and MBS that are issued or guaranteed by non-government entities to 15% of the Fund's net assets.

According to the Registration Statement, in addition to interest–only swaps and interest rate swaps, which are primary investments, the Fund may enter into other types of swap agreements. The swap agreements will have MBS as reference assets, including CMOs.

According to the Registration Statement, the Fund may invest directly and indirectly in foreign currencies. The Fund may conduct foreign currency transactions on a spot (i.e., cash) or forward basis (i.e., by entering into forward contracts to purchase or sell foreign currencies). Forward contracts are generally traded in an interbank market directly between currency traders (usually large commercial banks) and their customers. At the discretion of the Adviser, the Fund may, but is not obligated to, enter into forward currency exchange contracts for hedging purposes to help reduce the risks and volatility caused by changes in foreign currency exchange rates, or to gain exposure to certain currencies in an effort to achieve the Fund's investment objective.

According to the Registration Statement, the Fund may invest in equity securities. The Fund may invest in common stock, preferred stock, warrants, convertible securities, master limited partnerships (''MLPs'') and rights. Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio. A convertible security may also be called for redemption or conversion by the issuer after a particular date and under certain circumstances (including a specified price) established upon issue. MLPs are limited partnerships in which the ownership units are publicly traded.

According to the Registration Statement, the Fund may invest in shares of exchange traded real estate investment trusts (''REITs''). REITs are

[16] *See* note 8, *supra*. According to the Registration Statement, in the absence of normal circumstances the Fund may invest 100% of its total assets, without limitation, in debt securities and money market instruments, either directly or through exchange traded funds (''ETFs''). Debt securities and money market instruments include shares of other mutual funds, commercial paper, U.S. government securities, repurchase agreements and bonds that are rated BBB or higher. The Fund may be invested in this manner for extended periods, depending on the Sub-Adviser's assessment of market conditions. While the Fund is in a defensive position, the opportunity to achieve its investment objectives will be limited. Furthermore, to the extent that the Fund invests in money market mutual funds the Fund would bear its pro rata portion of each such money market fund's advisory fees and operational expenses.

[17] Dollar rolls are a type of repurchase transaction in the mortgage pass-through securities market in which the buy side trade counterparty of a ''to be announced'' (''TBA'') trade agrees to sell off the same TBA trade in the current month and to buy back the same trade in a future month at a lower price, constituting a forward contract.

[18] According to the Registration Statement, CMO residuals are mortgage securities issued by agencies or instrumentalities of the U.S. government or by private originators of, or investors in, mortgage loans. The cash flow generated by the mortgage assets underlying a series of CMOs is applied first to make required payments of principal and interest on the CMOs and second to pay the related administrative expenses and any management fee of the issuer. The residual in a CMO structure generally represents the interest in any excess cash flow remaining after making the foregoing payments. Transactions in CMO residuals will generally be completed only after careful review of the characteristics of the securities in question.

[19] According to the Registration Statement, in determining whether and how much to invest in privately issued mortgage-related securities, and how to allocate those assets, the Sub-Adviser will consider a number of factors. These include, but are not limited to: (1) The nature of the borrowers (e.g., residential vs. commercial); (2) the collateral loan type (*e.g.,* for residential: First Lien—Jumbo/Prime, First Lien—Alt-A, First Lien—Subprime, First Lien—Pay-Option or Second Lien; for commercial: Conduit, Large Loan or Single Asset/Single Borrower); and (3) in the case of residential loans, whether they are fixed rate or adjustable mortgages.

pooled investment vehicles which invest primarily in real estate or real estate related loans. REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs.

According to the Registration Statement, the Fund may invest in exchange-traded notes (''ETNs'').[20] It is expected that the ETN issuer's credit rating will be investment grade at the time of investment.

According to the Registration Statement, in addition to the U.S. Treasury debt securities described above, the Fund intends to invest in other fixed income securities. The fixed income securities the Fund may invest in are variable and floating rate instruments; bank obligations, including certificates of deposit, bankers' acceptances, and fixed time deposits; commercial paper; U.S. government securities other than U.S. Treasuries; [21] municipal securities; repurchase agreements; reverse repurchase agreements; corporate debt securities; convertible securities; and MBS. Some debt securities, such as zero coupon bonds, do not make regular interest payments but are issued at a discount to their principal or maturity value. Except as discussed herein, the Fund may invest in investment-grade debt securities, non-investment-grade debt securities, and unrated debt securities.[22] The Fund may invest assets in obligations of foreign banks which meet the conditions set forth herein.

According to the Registration Statement, the Fund may seek to invest in corporate debt securities representative of one or more high yield bond or credit derivative indices, which may change from time to time. Selection will generally be dependent on independent credit analysis or fundamental analysis performed by the Sub-Adviser.

According to the Registration Statement, the Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund will effect repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser.

According to the Registration Statement, the Fund may enter into reverse repurchase agreements. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

According to the Registration Statement, the Fund will only invest in commercial paper rated A–1 or A–2 by S&P or Prime-1 or Prime-2 by Moody's.

According to the Registration Statement, the Fund may invest in inflation-indexed bonds, which are fixed income securities whose principal value is periodically adjusted according to the rate of inflation.

According to the Registration Statement, the Fund may invest in securities that are indirectly linked to the performance of foreign issuers, specifically: American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs''), European Depositary Receipts (''EDRs''), International Depository Receipts (''IDRs''), ''ordinary shares,'' ''New York shares'' issued and traded in the U.S.[23] and exchange traded products (''ETPs'').

According to the Registration Statement, the Fund may invest in the securities of other investment companies to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the SEC or interpretation thereof. Consistent with such restrictions, the Fund may invest in several different types of investment companies from time to time, including mutual funds, ETFs, closed-end funds, and business development companies (''BDCs''), when the Adviser or the Sub-Adviser believes such an investment is in the best interests of the Fund and its shareholders. Closed-end funds are pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges. A BDC is a less common type of closed-end investment company that more closely resembles an operating company than a typical investment company. Investment companies may include index-based investments, such as ETFs that hold substantially all of their assets in securities representing a specific index.

According to the Registration Statement, in addition to the U.S. Treasury Futures, Agency MBS IOS and interest rate swaps discussed above, the Fund intends to invest in other derivatives. The derivatives in which the Fund may invest are other futures contracts, forward contracts,[24] options, options on futures, other swaps, hybrid instruments and structured notes. The Fund typically will use derivatives as a substitute for taking a position directly in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as currency risk. Not more than 10% of the net assets of the Fund in the aggregate shall consist of options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[20] ETNs are securities listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6) (''Index-Linked Securities''). ETNs are senior, unsecured unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees. ETNs have a maturity date and, generally, are backed only by the creditworthiness of the issuer.

[21] According to the Registration Statement, some obligations issued or guaranteed by U.S. government agencies and instrumentalities, including, for example, Ginnie Mae pass-through certificates, are supported by the full faith and credit of the U.S. Treasury. Other obligations issued by or guaranteed by federal agencies, such as those securities issued by Fannie Mae, are supported by the discretionary authority of the U.S. government to purchase certain obligations of the federal agency, while other obligations issued by or guaranteed by federal agencies, such as those of the Federal Home Loan Banks, are supported by the right of the issuer to borrow from the U.S. Treasury.

[22] According to the Registration Statement, non-investment-grade securities, also referred to as ''high yield securities'' or ''junk bonds,'' are debt securities that are rated lower than the four highest rating categories by a nationally recognized statistical rating organization (for example, lower than Baa3 by Moody's Investors Service, Inc. (''Moody's'') or lower than BBB- by Standard and Poor's Ratings Services (''S&P'')) or are determined to be of comparable quality by the Fund's Sub-Adviser. The creditworthiness of the issuer, as well as any financial institution or other party responsible for payments on the security, will be analyzed by the Sub-Adviser to determine whether to purchase unrated bonds.

[23] ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. The underlying securities may not necessarily be denominated in the same currency as the securities into which they may be converted. Generally, ADRs are designed for use in domestic securities markets and are traded on exchanges or OTC in the U.S. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer; however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world. Ordinary shares are shares of foreign issuers that are traded abroad and on a U.S. exchange. New York shares are shares that a foreign issuer has allocated for trading in the U.S. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. dollars. With the exception of ADRs traded OTC, which will comprise no more than 10% of the Fund's net assets, all equity securities, including, without limitation, exchange-traded ADRs, GDRs, EDRs, IDRs, New York shares and ordinary shares, that the Fund may invest in will trade on markets that are members of the ISG or that have entered into a comprehensive surveillance agreement with the Exchange.

[24] Specifically, in addition to the forward currency exchange contracts discussed above, the Fund may invest in mortgage dollar rolls, which constitute forward contracts.

According to the Registration Statement, the Fund will only enter into futures contracts that are traded on a national futures exchange regulated by the Commodities Futures Trading Commission (''CFTC'') and whose principal market is a member of ISG or is a market with which the Exchange has a comprehensive surveillance sharing agreement.[25] The Fund will only use futures contracts that have U.S. Treasury securities and interest rate swaps as their underlying reference assets. The Fund may use futures contracts and options on futures for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes. An option on a futures contract gives the purchaser the right, in exchange for a premium, to assume a position in a futures contract at a specified exercise price during the term of the option.

According to the Registration Statement, the Fund may write (sell) and purchase put and call options on indices and enter into related closing transactions. According to the Registration Statement, the Fund may trade put and call options on securities, securities indices and currencies, as the Sub-Adviser determines is appropriate in seeking the Fund's investment objective, and except as restricted by the Fund's investment limitations. The Fund may purchase put and call options on securities to protect against a decline in the market value of the securities in its portfolio or to anticipate an increase in the market value of securities that the Fund may seek to purchase in the future. The Fund may write covered call options on securities as a means of increasing the yield on its assets and as a means of providing limited protection against decreases in its market value. The Fund may purchase and write options on an exchange or OTC.

According to the Registration Statement, the Fund may invest in hybrid instruments. A hybrid instrument is a type of potentially high-risk derivative that combines a traditional stock, bond, or commodity with an option or forward contract. Generally, the principal amount, amount payable upon maturity or redemption, or interest rate of a hybrid is tied (positively or negatively) to the price of some security, commodity, currency or securities index or another interest rate or some other economic factor (each a ''benchmark''). The interest rate or (unlike most fixed income securities) the principal amount payable at maturity of a hybrid security may be increased or decreased, depending on changes in the value of the benchmark.

According to the Registration Statement, certain hybrid instruments may provide exposure to the commodities markets. These are derivative securities with one or more commodity-linked components that have payment features similar to commodity futures contracts, commodity options, or similar instruments. Commodity-linked hybrid instruments may be either equity or debt securities, and are considered hybrid instruments because they have both security and commodity-like characteristics. A portion of the value of these instruments may be derived from the value of a commodity, futures contract, index or other economic variable. The Fund will only invest in commodity-linked hybrid instruments that qualify, under applicable rules of the CFTC, for an exemption from the provisions of the CEA.

According to the Registration Statement, the Fund may invest in structured notes, which are debt obligations that also contain an embedded derivative component with characteristics that adjust the obligation's risk/return profile. Generally, the performance of a structured note will track that of the underlying debt obligation and the derivative embedded within it. The Fund have the right to receive periodic interest payments from the issuer of the structured notes at an agreed-upon interest rate and a return of the principal at the maturity date.

According to the Registration Statement, the Fund, from time to time, in the ordinary course of business, may purchase securities on a when-issued, delayed-delivery or forward commitment basis (i.e., delivery and payment can take place between a month and 120 days after the date of the transaction). The Fund will not purchase securities on a when-issued, delayed-delivery or forward commitment basis if, as a result, more than 15% of the Fund's net assets would be so invested.

Investment Restrictions

According to the Registration Statement, the Fund may not purchase or sell commodities or commodity contracts unless acquired as a result of ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts; but this shall not prevent the Fund from purchasing, selling and entering into futures contracts, options on financial futures contracts, warrants, swaps, forward contracts, foreign currency spot and forward contracts or other derivative instruments that are not related to physical commodities. The Fund will only use futures contracts that have U.S. Treasury securities and interest rate swaps as their underlying assets.

According to the Registration Statement, the Fund may not, with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or acquire more than 10% of the outstanding voting securities of any one issuer.[26]

According to the Registration Statement, the Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or shares of investment companies. The Fund will

[25] To the extent the Fund invests in futures, options on futures or other instruments subject to regulation by the CFTC, it will do so in reliance on and in compliance with CFTC regulations in effect from time to time and in accordance with the Fund's policies. The Trust, on behalf of certain of its series, has filed a notice of eligibility for exclusion from the definition of the term ''commodity pool operator'' in accordance with CFTC Regulation 4.5. Therefore, neither the Trust nor the Fund is deemed to be a ''commodity pool'' or ''commodity pool operator'' with respect to the Fund under the Commodity Exchange Act (''CEA''), and they are not subject to registration or regulation as such under the CEA. In addition, as of the date of this filing, the Adviser is not deemed to be a ''commodity pool operator'' or ''commodity trading adviser'' with respect to the advisory services it provides to the Fund. The CFTC recently adopted amendments to CFTC Regulation 4.5 and has proposed additional regulatory requirements that may affect the extent to which the Fund invests in instruments that are subject to regulation by the CFTC and impose additional regulatory obligations on the Fund and the Adviser. The Fund reserves the right to engage in transactions involving futures, options thereon and swaps to the extent allowed by CFTC regulations in effect from time to time and in accordance with the Fund's policies.

[26] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act. According to the Registration Statement, in the case of privately issued mortgage-related securities, the Fund takes the position that mortgage-related securities do not represent interests in any particular ''industry'' or group of industries. Therefore, the Fund may invest more or less than 25% of its total assets in privately issued mortgage-related securities.

not invest 25% or more of its total assets in any investment company that so concentrates.[27]

According to the Registration Statement, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[28]

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code.[29]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

According to the Registration Statement, while the Fund does not anticipate doing so, the Fund may borrow money for investment purposes. The Fund may also borrow money to facilitate management of the Fund's portfolio by enabling the Fund to meet redemption requests when the liquidation of portfolio instruments would be inconvenient or disadvantageous. Such borrowing is not for investment purposes, will be repaid by the Fund promptly and will be consistent with the requirements of the 1940 Act and the rules thereunder.

According to the Registration Statement, the Fund may lend portfolio securities to brokers, dealers and other financial organizations that meet capital and other credit requirements or other criteria established by the Fund's Board of Trustees. These loans, if and when made, may not exceed 33⅓% of the total asset value of the Fund (including the loan collateral). The Fund will not lend portfolio securities to the Adviser, Sub-Adviser, or their affiliates, unless it has applied for and received specific authority to do so from the Commission. Loans of portfolio securities will be fully collateralized by cash, letters of credit or U.S. government securities, and the collateral will be maintained in an amount equal to at least 100% of the current market value of the loaned securities by marking to market daily.

Net Asset Value

According to the Registration Statement, the Fund will calculate its NAV by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders. The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the Exchange (normally, 4:00 p.m., Eastern Time).

In calculating NAV, the Fund's securities holdings will be valued based on their last readily available market price.

Futures contracts, exchange-traded options, and options on futures, will be valued at the closing settlement price determined by the applicable exchange. Other exchange-traded securities, including equity securities (including ETPs such as exchange-traded ADRs, GDRs, EDRs, IDRs, ordinary shares, New York shares, ETNs, and ETFs), and exchange-traded REITs, will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. If market prices are unavailable or the Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Trust's Board of Trustees.

ADRs traded OTC will be valued on the basis of the market closing price on the exchange where the stock of the foreign issuer that underlies the ADR is listed. Investment company securities (other than ETFs), including mutual funds, closed end funds, and BDCs, will be valued at net asset value.

Non-exchange-traded derivatives, including forward contracts, swaps, options traded OTC, options on futures traded OTC, hybrid instruments and structured notes, will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics.

Fixed income securities, including CMOs (including agency interest-only CMOs), CMO residuals, mortgage dollar rolls, U.S. Treasury securities, other obligations issued or guaranteed by U.S. government agencies and instrumentalities, bonds, bank obligations, ABS, MBS, shares of other mutual funds, commercial paper, repurchase agreements, reverse repurchase agreements, corporate debt securities, municipal securities, convertible securities, certificates of deposits and bankers' acceptances generally trade in the OTC market rather than on a securities exchange. The Fund will generally value these portfolio assets by relying on independent pricing services. The Fund's pricing services will use valuation models or matrix pricing to determine current value. In general, pricing services use information with respect to comparable bond and note transactions, quotations from bond dealers or by reference to other assets that are considered comparable in such characteristics as rating, interest rate, maturity date, option adjusted spread models, prepayment projections, interest rate spreads and yield curves. Matrix price is an estimated price or value for a fixed-income security. Matrix pricing is considered a form of fair value pricing. The Fund's debt securities will generally be valued at bid prices. In certain cases, some of the Fund's debt securities may be valued at the mean between the last available bid and ask prices.

Foreign exchange rates will be priced using 4:00 p.m. (Eastern Time) mean prices from major market data vendors.

[27] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[28] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act.

[29] 26 U.S.C. 851.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares on a continuous basis at NAV in aggregated lots which shall initially be of 25,000 Shares (each, a ''Creation Unit'').

All orders to create or redeem Creation Units must be received by the Distributor no later than 3:00 p.m., Eastern Time in order for the creation or redemption of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date.

The Trust reserves the right to offer an ''all cash'' option for creations and redemptions of Creation Units for the Fund.[30]

The consideration for purchase of a Creation Unit of each Fund generally will consist of an in-kind deposit of a designated portfolio of securities—the ''Deposit Securities''—per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash—the ''Cash Component.'' Together, the Deposit Securities and the Cash Component will constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares of the Fund (per Creation Unit) and the market value of the Deposit Securities.

In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—i.e., a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for transfer through the clearing process, or which may not be eligible for trading by an authorized participant or the investor for which it is acting.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. The Trust will not redeem Shares of the Fund in amounts less than Creation Units. Unless cash redemptions are available or specified, the redemption proceeds for a Creation Unit generally will consist of ''the Fund Securities''—as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less a redemption transaction fee. The Administrator, through the National Securities Clearing Corporation (''NSCC''), will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Fund Securities that will be applicable to redemption requests received in proper form on that day as well as the estimated Cash Component.

According to the Registration Statement, if it is not possible to effect deliveries of the Fund Securities, for example if the investor is not able to accept delivery, the Trust may in its discretion exercise its option to redeem Shares of the Fund in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit.[31] In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, as described in the Registration Statement). The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the applicable Fund Securities but does not differ in NAV.

Redemptions of Shares for Fund Securities will be subject to compliance with applicable federal and state securities laws and the Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that the Fund could not lawfully deliver specific Fund Securities upon redemptions or could not do so without first registering the Fund Securities under such laws. An authorized participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the Fund Securities applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash.

Availability of Information

The Fund's Web site (*www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[32] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's Web site will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[33]

On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's Web site the following information regarding each portfolio holding of the Fund, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be

[30] The Adviser represents that, to the extent the Trust effects the creation of Shares in cash, such transactions will be effected in the same manner for all authorized participants.

[31] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all authorized participants.

[32] The Bid/Ask Price of the Fund is determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[33] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the Consolidated Tape Association (''CTA'') high-speed line, and from the national securities exchange on which they are listed. Quotation and last sale information for exchange-listed options will be available via the Options Price Reporting Authority. Price information regarding the futures contracts, exchange-traded options, options on futures, equity securities (including ETPs such as exchange-listed ADRs, GDRs, EDRs, IDRs, ordinary shares and New York shares as well as ETNs, and ETFs), and exchange-traded REITs, held by the Fund will be available from the U.S. and non-U.S. exchanges trading such assets.

Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC; investment company securities other than ETFs; non-exchange-traded derivatives, including forward contracts, IOS and other swaps, options traded OTC, options on futures, hybrid instruments and structured notes; fixed income securities, including CMOs (including agency interest-only CMOs), CMO residuals, mortgage dollar rolls, U.S. Treasury securities, other obligations issued or guaranteed by U.S. government agencies and instrumentalities, bonds, bank obligations, ABS, MBS, shares of other mutual funds, commercial paper, repurchase agreements, reverse repurchase agreements, corporate debt securities, municipal securities, convertible securities, certificates of deposit and bankers' acceptances. Pricing information regarding each asset class in which the Fund will invest is generally available through nationally recognized data service providers through subscription agreements. Foreign exchange prices are available from major market data vendors.

In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[34] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[35] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [36] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[37]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.[38]

[34] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[35] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[36] 17 CFR 240.10A–3.

[37] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[38] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-listed equity securities, futures contracts and exchange-listed options contracts with other markets and other entities that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, futures contracts and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, futures contracts and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. As noted above, with the exception of ADRs traded OTC, which will comprise no more than 10% of the Fund's net assets, all equity securities, including, without limitation, exchange-traded ADRs, GDRs, EDRs, IDRs, New York shares and ordinary shares, that the Fund may invest in will trade on markets that are members of ISG or that have entered into a comprehensive surveillance agreement with the Exchange. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [39] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-listed equity securities, futures contracts and exchange-listed options contracts with other markets and other entities that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, futures contracts and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, futures contracts and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. As noted above, with the exception of ADRs traded OTC, which will comprise no more than 10% of the Fund's net assets, all equity securities, including, without limitation, exchange-traded ADRs, GDRs, EDRs, IDRs, New York shares and ordinary shares, and Treasury futures that the Fund may invest in will trade on markets that are members of ISG or that have entered into a comprehensive surveillance agreement with the Exchange. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. Not more than 10% of the net assets of the Fund in the aggregate shall consist of options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Fund will limit investments in ABS and MBS that are issued or guaranteed by non-government entities to 15% of the Fund's net assets. The Fund may not purchase or hold illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid securities. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Neither the Adviser nor the Sub-Adviser is a broker-dealer or is affiliated with a broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, (b) the Sub-Adviser becomes newly affiliated with a broker-dealer, or (c) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and the

[39] 15 U.S.C. 78f(b)(5).

underlying U.S. exchange-traded equity securities will be available via the CTA high-speed line, and from the national securities exchange on which they are listed. Quotation and last sale information for exchange-listed options will be available via the Options Price Reporting Authority. Price information regarding the futures contracts, exchange-traded options, options on futures, equity (including ETPs such as ADRs traded OTC, GDRs, EDRs, IDRs, ordinary shares and New York shares as well as ETNs, and ETFs), and exchange-traded REITs, held by the Fund will be available from the U.S. and non-U.S. exchanges trading such assets. Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC; investment company securities other than ETFs; non-exchange-traded derivatives, including forward contracts, IOS and other swaps, options traded OTC, options on futures, hybrid instruments and structured notes; fixed income securities, including CMOs (including agency interest-only CMOs), CMO residuals, mortgage dollar rolls, U.S. Treasury securities, other obligations issued or guaranteed by U.S. government agencies and instrumentalities, bonds, bank obligations, ABS, MBS, shares of other mutual funds, commercial paper, repurchase agreements, reverse repurchase agreements, corporate debt securities, municipal securities, convertible securities, certificates of deposit and bankers' acceptances. Pricing information regarding each asset class in which the Fund will invest is generally available through nationally recognized data service providers through subscription agreements. Foreign exchange prices are available from major market data vendors. In addition, the Portfolio Indicative Value will be widely disseminated by the Exchange at least every 15 seconds during the Core Trading Session. The Fund's Web site will include a form of the prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's Web site will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's Web site the following information regarding each portfolio holding of the Fund, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2014–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–71 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18114 Filed 7–31–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72685; File No. SR–BATS–2014–029]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify for Members and Non-Members the Use of Certain Data Feeds for Order Handling and Execution, Order Routing and Regulatory Compliance of BATS Exchange, Inc.

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 15, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify for Members[3] and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[4]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this filing to clarify for Members and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance.

Order Handling and Execution

In order to calculate the national best bid and offer (''NBBO'') in its Matching Engine (the ''ME''), the Exchange uses quotes disseminated by market centers through proprietary data feeds (generally referred to as ''Direct Feeds'') as well as by the Securities Information Processors (''SIP''). The ME uses quotes disseminated from SIP feeds for the Chicago Stock Exchange, Inc. and NYSE MKT LLC. The Exchange notes that the ME receives Direct Feeds from the Exchange's affiliates, BATS Y-Exchange Inc., EDGA Exchange, Inc., and EDGX Exchange, Inc.

In addition to receiving Direct Feeds and SIP feeds, the ME's calculation of the NBBO may be adjusted based on orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange (collectively ''Feedback''). The Exchange does not include its quotes in the calculation of the Exchange's NBBO because the system is designed such that all incoming orders are separately compared to the Exchange's Best Bid or Offer and the Exchange calculated NBBO, which together create a complete view of the NBBO, prior to display, execution, or routing.

Feedback from the receipt of Intermarket Sweep Orders (''ISOs'') with a time-in-force of Day (''Day ISOs'') and feedback from the Exchange's routing broker/dealer, BATS Trading, Inc., (''BATS Trading''), as described below, are used to augment the market data received by Direct Feeds and the SIP feeds. The Exchange's ME will update the NBBO upon receipt of a Day ISO. When a Day ISO is posted on the BATS Book,[5] the ME uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes.[6] The ME will then display and execute non-ISO orders at the same price as the Day ISO.

All Feedback expires as soon as: (i) One (1) second passes; (ii) the Exchange receives new quote information; or (iii) the Exchange receives updated Feedback information. With the exception of Day ISO Feedback, the Exchange only generates Feedback where the order was routed using one of the following routing strategies: Parallel D, Parallel 2D, Parallel T, SLIM, and TRIM (collectively ''Smart Order Routing'').[7]

[40] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 1.5(e).

[6] Pursuant to Regulation NMS, a broker-dealer routing a Day ISO is required to simultaneously route one or more additional ISOs, as necessary, to execute against the full displayed size of any protected quote priced equal to or better than the Day ISO. *See also* Question 5.02 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

[7] *See* Exchange Rule 11.13(a)(3). Thus, the Exchange does not generate Feedback from routing options where the User directs the Exchange to route an order to a particular venue, such as Destination Specific Orders and Directed ISOs, as defined in Rules 11.9(c)(12) and 11.9(d)(2),

Continued

The Pegged NBBO (''PBBO'') comprises the Exchange's calculation of the NBBO for purposes of determining the price at which a Pegged Order,[8] Mid-Point Peg Order,[9] or Market Maker Peg Order [10] is to be pegged. The PBBO includes the Exchange's quotes from the SIP feeds in the calculation but is otherwise derived using the same Direct Feeds, SIP feeds, and Feedback used for the NBBO calculation.

Order Routing

When the Exchange has a marketable order with instructions from the sender that the order is eligible to be routed, and the ME identifies that there is no matching price available on the Exchange, but there is a matching price represented at another venue that displays protected quotes, then the ME will send the order to the Routing Engine (''RE'') of BATS Trading.

In determining whether to route an order, the RE makes its own calculation of the NBBO using the Direct Feeds, SIP feeds, and Router Feedback, as described below.[11] The RE does not utilize Day ISO Feedback in constructing the NBBO; however, because all orders initially flow through the ME, to the extent Day ISO Feedback has updated the ME's calculation of the NBBO, all orders processed by the RE do take Day ISO Feedback into account. The RE receives Feedback from all Smart Order Routing strategies.

There are three types of Router Feedback that contribute to the Exchange's calculation of the NBBO:

- Immediate Feedback. Where BATS Trading routes an order to a venue with a protected quotation using Smart Order Routing (a ''Feedback Order''), the number of shares available at that venue is immediately decreased by the number of shares routed to the venue at the applicable price level.
- Execution Feedback. Where BATS Trading receives an execution report associated with a Feedback Order that indicates that the order has fully executed with no remaining shares associated with the order, all opposite side quotes on the venue's order book that are priced more aggressively than the price at which the order was executed will be ignored.
- Cancellation Feedback. Where BATS Trading receives an execution report associated with a Feedback Order that indicates that the order has not fully executed (either a partial execution or a cancellation), all opposite side quotes on the venue's order book that are priced equal to or more aggressively than the limit price for the order will be ignored.

All Feedback expires as soon as: (i) One (1) second passes; (ii) the Exchange receives new quote information; or (iii) the Exchange receives updated Feedback information.

Regulatory Compliance

Locked or Crossed Markets. The ME determines whether the display of an order would lock or cross the market. At the time an order is entered into the ME, the ME will establish, based upon its calculation of the NBBO from Direct Feeds, SIP feeds and Feedback, whether the order will lock or cross the prevailing NBBO for a security. In the event that the order would produce a locking or crossing condition, the ME will cancel the order, re-price [12] the order, or route the order based on the Member's instructions. Two exceptions to this logic are Day ISOs and declarations of self-help.

Pursuant to Regulation NMS, when an Exchange receives a Day ISO, the sender of the ISO retains the responsibility to comply with applicable rules relating to locked and crossed markets.[13] In such case, the Exchange is obligated only to display a Day ISO order at the Member's price, even if such price would lock or cross the market.[14]

Declarations of self-help occur when the RE detects that an exchange displaying protected quotes is slow, as defined in Regulation NMS, or non-responsive to the Exchange's routed orders. In this circumstance, according to Rule 611(b) of Regulation NMS, the Exchange may display a quotation that may lock or cross the market where the quotation that it may lock or cross is displayed by the market that the Exchange invoked self-help against.[15] The Exchange may also declare self-help where another exchange's SIP quotes are slow or non-responsive resulting in a locked or crossed market. Once the Exchange declares self-help, the ME and RE will ignore the quotes generated from the self-helped market in their calculations of the NBBO for execution and routing determinations in compliance with Regulation NMS. The Exchange will also disable all routing to the self-helped market. The ME and RE will continue to consume the self-helped market center's quotes; however, in order to immediately include the quote in the NBBO calculation and enable routing once self-help is revoked.

Trade-Through Rule. Pursuant to Rule 611 of Regulation NMS, the Exchange shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on trading centers of protected quotations in NMS stocks that do not fall within a valid exception and, if relying on such an exception, that are reasonably designed to ensure compliance with the terms of the exception. The ME will not permit an execution on the Exchange if there are better-priced protected quotations displayed in the market unless the order is an ISO. At the time an order is entered into the ME, the ME uses the view of the NBBO as described above. If the NBBO is priced better than what is resident on the Exchange, the Exchange will not match such order on the BATS Book, and based on the Member's instructions, the ME will cancel the order, re-price the order or route the order.

Regulation SHO. The Exchange cannot execute a Short Sale Order [16] equal to or below the current National Best Bid (''NBB'') when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker'').[17] When a Short Sale Circuit Breaker is in effect, the Exchange utilizes information received from Direct Feeds, SIP feeds, and Feedback, and a view of the BATS Book to assess its compliance with Rule 201 of Regulation SHO. The primary difference between the NBBO used for compliance with Rule 201 of Regulation

respectively, nor does the Exchange generate Feedback from the DRT routing option defined in Rule 11.13(a)(3)(E), which routes to alternative trading systems.

[8] *See* Exchange Rule 11.9(c)(8).

[9] *See* Exchange Rule 11.9(c)(9).

[10] *See* Exchange Rule 11.9(c)(16).

[11] The Exchange uses the same Direct Feeds and quotes from the SIP feeds in the RE as is described above with respect to the ME.

[12] *See* Rule 11.9(g).

[13] *See* supra note 6.

[14] *See* supra note 6.

[15] *See also* Question 5.03 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

[16] *See* Exchange Rule 11.19.

[17] 17 CFR 242.200(g); 17 CFR 242.201. On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201, pursuant to which, among other things, short sale orders in covered securities generally cannot be executed or displayed by a trading center, such as the Exchange, at a price that is at or below the current NBB when a Short Sale Circuit Breaker is in effect for the covered security. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a ''short exempt'' marking requirement. *See also* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (extending the compliance date for Rules 201 and 200(g) to February 28, 2011). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, *www.sec.gov/divisions/marketreg/rule201faq.htm.*

SHO and other constructions of the NBBO, however, is that the Exchange includes market centers against which it has declared self-help in its view of the NBBO.

Latent or Inaccurate Direct Feeds. Where the Exchange's systems detect problems with one or more Direct Feeds, the Exchange will immediately fail over to the SIP feed to calculate the NBBO for the market center(s) where the applicable Direct Feed is experiencing issues. Problems that lead to immediate failover to the SIP feed may include a significant loss of information (*i.e.,* packet loss) or identifiable latency, among other things. The Exchange can also manually failover to the SIP feed in lieu of Direct Feed data upon identification by a market center of an issue with its Direct Feed(s).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Section 6(b)(5) of the Act [19] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users.

The Exchange believes that its proposal to describe the Exchange's use of data feeds removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity and transparency. The Exchange's proposal will enable investors to better assess the quality of the Exchange's execution and routing services. The proposal does not change the operation of the Exchange or its use of data feeds; rather it describes how, and for what purposes, the Exchange uses the quotes disseminated from data feeds to calculate the NBBO for a security for purposes of Regulation NMS, Regulation SHO and various order types that update based on changes to the applicable NBBO. The Exchange believes the additional transparency into the operation of the Exchange as described in the proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes the proposal would enhance competition because describing the Exchange's use of data feeds enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–029 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18120 Filed 7–31–14; 8:45 am]

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[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72691; File No. SR–EDGX–2014–19]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change To Establish a New Market Data Product Called the BATS One Feed

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a new market data product called the BATS One Feed as well as to establish related market data fees. The text of the proposed BATS One Feed is attached as Exhibit 5A. The proposed changes to the fee schedule are attached as Exhibit 5B. Exhibits 5A and 5B are available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a new market data product called the BATS One Feed. As described more fully below, the BATS One Feed is a data feed that will disseminate, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGX and its affiliated exchanges [3] (collectively, the ''BATS Exchanges'') and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[4] The BATS One Feed will also contain the individual last sale information for EDGX and each of its affiliated exchanges. In addition, the BATS One Feed will contain optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels.

The BATS One Feed is designed to meet the needs of prospective Members that do not need or are unwilling to pay for the individual book feeds offered by each of the individual BATS Exchanges. In addition, the BATS One Feed offers market data vendors and purchasers a suitable alternative to the use of consolidated data where consolidated data are not required to be purchased or displayed. Finally, the proposed new data feed provides investors with new options for receiving market data and competes with similar market data products offered by NYSE Technologies, an affiliate of the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[5]

[3] EDGX's affiliated exchanges are EDGA Exchange, Inc. (''EDGA''), BATS Exchange, Inc. (''BATS''), and BATS Y-Exchange, Inc. (''BYX''). On January 31, 2014, Direct Edge Holdings LLC (''DE Holdings''), the former parent company of the Exchange and EDGA, completed its business combination with BATS Global Markets, Inc., the parent company of BATS and BYX. *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43). Upon completion of the business combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.''

[4] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement the BATS One Feed and its related fees.

[5] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); NYSE Technologies Best Book and Trade (''BQT''), *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[6]

Description of the BATS One Feed

The BATS One Feed will contain the aggregate BBO of the BATS Exchanges for all securities that are traded on the BATS Exchanges and for which the BATS Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The aggregate BBO would include the total size of all orders at the BBO available on all BATS Exchanges.[7] The BATS One Feed would also disseminate last sale information for each of the individual BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). The last sale information will include the price, size, time of execution, and individual BATS Exchange on which the trade was executed. The last sale message will also include the cumulative number of shares executed on all BATS Exchanges for that trading day. The Exchange will disseminate the aggregate BBO of the BATS Exchanges and last sale information through the BATS One Feed no earlier than each individual BATS Exchange provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The BATS One Feed would also consist of Symbol Summary, Market Status, Retail Liquidity Identifier on behalf of BYX, Trading Status, and Trade Break messages. The Symbol Summary message will include the total executed volume across all BATS Exchanges. The Market Status message is disseminated to reflect a change in the status of one of the BATS Exchanges. For example, the Market Status message will indicate whether

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[7] The Exchange notes that quotations of odd lot size, which is generally less than 100 shares, are included in the total size of all orders at a particular price level in the BATS One Feed but are currently not reported by the BATS Exchanges to the consolidated tape.

one of the BATS Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the BATS One Feed as part of the aggregated BBO. The Market Status message will also indicate where BATS Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

The Retail Liquidity Identifier indicator message will be disseminated via the BATS One Feed on behalf of BYX only pursuant to BYX's Retail Price Improvement (''RPI'') Program.[8] The Retail Liquidity Identifier indicates when RPI interest priced at least $0.001 better than BYX's Protected Bid or Protected Offer for a particular security is available in the System. The Exchange proposes to disseminate the Retail Liquidity Indicator via the BATS One Feed in the same manner as it is currently disseminated through consolidated data streams (*i.e.,* pursuant to the Consolidated Tape Association Plan/Consolidated Quotation Plan, or CTA/CQ, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through proprietary BYX data feeds. The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest. In particular, like CQ and UTP quoting outputs, the BATS One Feed will include a field for codes related to the Retail Price Improvement Identifier. The codes indicate RPI interest that is priced better than BYX's Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the Program.

The Trade Break message will indicate when an execution on a BATS Exchange is broken in accordance with the individual BATS Exchange's rules.[9] The Trading Status message will indicate the current trading status of a security on each individual BATS Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker''),[10] or the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

Optional Aggregate Depth of Book. The BATS One Feed will also contain optional functionality which will enable recipients to receive two-sided quotations from the BATS Exchanges for five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (''BATS One Premium Feed''). For each price level on one of the BATS Exchanges, the BATS One Premium Feed option of the BATS One Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.[11]

BATS One Feed Fees

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees; [12] (ii) Usage Fees for both Professional and Non-Professional Users; [13] and (iii) Enterprise Fees.[14] The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distribution Fees.

Definitions. The Exchange also proposes to include in its fee schedule the following defined terms that relate to the BATS One Feed fees.

- ''Distributor'' will be defined as ''any entity that receives the BATS One Feed directly from EDGX or indirectly through another entity and then distributes it internally or externally to a third party.'' [15]
- ''Internal Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users within the Distributor's own entity.'' [16]
- ''External Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users outside the Distributor's own entity.'' [17]
- ''User'' will be defined as a ''natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.''
- ''Non-Professional User'' will be defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.'' [18]
- ''Professional User'' will be defined as ''any User other than a Non-Professional User.'' [19]

Internal Distribution Fees. Each Internal Distributor that receives only

[8] For a description of BYX's RPI Program, *see* BYX Rule 11.24. *See also* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2, to Adopt a Retail Price Improvement Program); Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (August 31, 2012) (SR–BYX–2019–019) (Notice of Filing of Proposed Rule Change to Adopt a Retail Price Improvement Program).

[9] *See, e.g.,* Exchange and EDGA Rule 11.13, Clearly Erroneous Executions, and BATS and BYX Rule 11.17, Clearly Erroneous Executions.

[10] 17 CFR 242.200(g); 17 CFR 242.201.

[11] Recipients who do not elect to receive the BATS One Premium Feed will receive the aggregate BBO of the BATS Exchanges under the BATS Summary Feed, which, unlike the BATS Premium Feed, would not delineate the size available at the BBO on each individual BATS Exchange.

[12] The Exchange notes that distribution fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 7019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[13] The Exchange notes that usage fees as well as the distinctions based on professional and non-professional subscribers have been previously filed with or approved by the Commission by Nasdaq and the NYSE. *See* Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102).

[14] The Exchange notes that enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. *See* Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR–NYSE–2013–58); 70010 (July 19, 2013) (File No. SR–CTA/CQ–2013–04).

[15] The proposed definition of ''Distributor'' is similar to Nasdaq Rule 7047(d)(1).

[16] The proposed definition of ''Internal Distributor'' is similar to Nasdaq Rule 7047(d)(1)(A).

[17] The proposed definition of ''External Distributor'' is similar to Nasdaq Rule 7047(d)(1)(B).

[18] The proposed definition of ''Professional User'' is similar to Nasdaq Rule 7047(d)(3)(A).

[19] The proposed definition of ''Non-Professional User'' is similar to Nasdaq Rule 7047(d)(3)(B).

the BATS One Summary Feed shall pay an Internal Distributor Fee of $10,000.00 per month. Each Internal Distributor shall pay an Internal Distributor Fee of $15,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange will charge no usage fees for BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

External Distribution Fees. The Exchange proposes to charge those firms that distribute the BATS One Feed externally an External Distributor Fee of $2,500.00 per month for the BATS One Summary Feed. Each External Distributor shall pay an External Distributor Fee of $5,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.

In addition to Internal and External Distribution Fees, the Exchange also proposes to charge recipient firms who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $10.00 per user for receipt of the BATS One Summary Feed or $15.00 per user who elects to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user where they elects to also receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.[20] Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.
- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a $5,000.00 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling $5,000.00 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $4,000.00 of monthly usage, it will pay a net of $1,000 for the Distributor Fee.

Enterprise Fee. The Exchange also proposes to establish a $50,000.00 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an external distributor to receive the data for an unlimited number of Professional and Non-Professional Users and $100,000.00 per month for recipient firms who elect to also receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Subscribers who each receive the BATS One Summary Feed portion of the BATS One Feed at $10.00 per month, then that recipient firm will pay $150,000.00 per month in Professional Subscriber fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $50,000.00 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such Subscriber to be covered by an Enterprise Fee rather than by per-Subscriber fees. A Subscriber that pays the Enterprise Fee will not have to report the number of such Subscribers on a monthly basis. However, every six months, a Subscriber must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trading Notice to be published as soon as practicable following approval of the proposed rule change by the Commission. The Exchange anticipates making available the BATS One Feed for evaluation as soon as practicable after approval of the proposed rule change by the Commission.

2. Statutory Basis

The BATS One Feed

The Exchange believes that the proposed BATS One Feed is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the BATS One Feed. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where

[20] Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms whose Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time last sale information and best-bid-and-offer information contained in the BATS One Feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [23] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[24] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[25]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. The BATS One Feed is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

BATS One Feed Fees

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,[26] in general, and Section 6(b)(4) of the Act,[27] in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Exchange also notes that products described herein are entirely optional. Firms are not required to purchase the BATS One Feed. Firms have a wide variety of alternative market data products from which to choose. Moreover, the Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers. The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of market forces to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' [28]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [29]

The 2010 Dodd-Frank amendments to the Exchange Act reinforce the court's conclusions about congressional intent. On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.'' The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or

[23] 15 U.S.C. 78k–1.

[24] *See* 17 CFR 242.603.

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4).

[28] *Id.* at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

[29] *Id.*

disapproved only where the Commission has concerns that the change may not be consistent with the Act. As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[30] In addition, the existence of alternatives to these data products, such as proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in their greater availability to Professional and Non-Professional Users. Moreover, introducing a Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data and provides the same data that is available to Professional Users.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of $26 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $100,000 per month for distribution to an unlimited number of non-professional users or $365,000 per month for up to 16,000 professional users, plus $2 for each additional professional user over 16,000.[31] The Exchange notes that Nasdaq Basic also offers data for Nasdaq OMX BX and Nasdaq OMX PSX, as described below. The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT, for a monthly fee of $18 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. EDGX's proposed per-user fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of $20–$50 per device, depending on the number of professional subscribers, and $1.00 per non-professional subscriber, depending on the number of non-professional subscribers.[32] A monthly enterprise fee of $686,400 is available under which a U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its nonprofessional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

Enterprise Fee. The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per user structure and benefit from the per user fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users that select these products. The fee structure of differentiated professional and non-professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[33] Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.[34] The Exchange believes that the Distribution Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distribution fee is higher than those of competitor products, there are no usage fees assessed for Users that receive the BATS One Feed data through Internal Distribution, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer. In addition, for External Distribution, the Distribution Fees are similar to or lower than similar

[30] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[31] *See* Nasdaq Rule 7047.

[32] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA.*

[33] *See, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); NASDAQ Rules 7023(b), 7047.

[34] The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

products. For example, under the Nasdaq UTP and CTA and CQ Plans, consolidated last sale and bid-ask data are offered for a combined monthly fee of $3,000 for redistribution.[35] The Exchange is proposing Distribution Fees that are less than the fees currently charged by the Nasdaq UTP and CTA and CQ Plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. An exchange's ability to price its proprietary data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary last sale data. Because other exchanges already offer similar products,[36] the Exchange's proposed BATS One Feed will enhance competition. Specifically, the BATS One Feed was developed to compete with similar market data products offered by Nasdaq and NYSE Technologies, an affiliate of the NYSE.[37] The BATS One Feed will foster competition by providing an alternative market data product to those offered by Nasdaq and the NYSE for less cost, as described in more detail in Section 3(b) above. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[38]

The proposed BATS One Feed would enhance competition by offering a market data product that is designed to compete directly with similar products offered by the NYSE and Nasdaq. Nasdaq Basic is a product that includes two feeds, QBBO, which provides BBO information for all U.S. exchange-listed securities on Nasdaq and NLS Plus, which provides last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF,[39] Nasdaq OMX BX, and Nasdaq OMX PSX.[40] Likewise, NYSE BQT includes BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT.[41] As a result, Nasdaq Basic and NYSE BQT comprise a significant view of the market on any given day and both include data from multiple trading venues. As the BATS Exchanges are consistently one of the top exchange operators by market share for U.S. equities trading, excluding opening and closing auction volume, the data included within the BATS One Feed will provide investors with an alternative to Nasdaq Basic and NYSE BQT and a new option for obtaining a broad market view, consistent with the primary goal of the market data amendments adopted by Regulation NMS.[42]

The BATS One Feed will not only provide content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. As previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is 60% less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

As the Exchange considers the integration of the BATS One Feed into External Distributor products an important ingredient to the product's success, the Exchange has designed pricing that enables External Distributors to spend three months integrating BATS One Feed data into their products and to enlist new Users to receive the BATS One Feed data for free with no External Distribution charges. In addition, the Exchange is providing External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fees up to the amount of the External Distribution Fee, which could result in the External Distributor paying a discounted or no External Distribution Fee once the free three months period has ended. With the fee incentives in place, External Distributors may freely choose to include the BATS One Feed data into their product thereby increasing competition with External Distributors offering similar products, replace alternative data provided by Nasdaq Basic or NYSE BQT with the BATS One Feed data or enhance their product to include BATS One Feed data along with data offered by competitors to create a distributor product that may be more valuable than the BATS One Feed or any competitor product alone. As with any product, the recipients of the data will determine the value of the data provided by the exchange directly or through an External Distributor. Potential subscribers may opt to disfavor the BATS One Feed based on the content provided or the pricing and may believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed BATS One Feed will impair the ability of External Distributors or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes the BATS One Feed will further enhance competition by providing External Distributors with a data feed that allows them to more quickly and efficiently integrate into their existing products. Today, Distributors subscribe to various market data products offered by single exchanges and resell that data, either separately or in the aggregate, to their subscribers as part of the their own market data offerings. Distributors may incur administrative costs when consolidating and augmenting the data to meet their subscriber's need. Consequently, many External Distributors will simply choose to not take the data because of the effort and cost required to aggregate data from separate feeds into their existing products. Those same Distributors have expressed interest in the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges. The Exchange, therefore, believes that by providing market data that encompasses combined data from affiliated

[35] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA,* Nasdaq UTP fees available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListUTP#uf.*

[36] *See supra* note 5.

[37] *Id.*

[38] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[39] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq TRF).

[40] *See* Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX).

[41] *See* NYSE Technologies BQT, *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[42] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

exchanges, the Exchange enables certain External Distributors with the ability to compete in the provision of similar content with other External Distributors, where they may not have done so previously if they were required to subscribe to the depth-of-book feeds from each individual BATS Exchange.

Although the Exchange considers the acceptance of the BATS One Feed by External Distributors as important to the success of the product, depending on their needs, External Distributors may choose not to subscribe to the BATS One Feed and may rather receive the BATS Exchange individual market data products and incorporate them into their specific market data products. For example, the BATS Premium Feed provides depth-of-book information for up to five price levels while each of the BATS Exchange's individual data feeds offer complete depth-of-book and are not limited to five price levels.[43] Those subscribers who wish to view the complete depth-of-book from each individual BATS Exchange may prefer to subscribe to one or all of individual BATS Exchange depth-of-book data feeds instead of the BATS One Feed. The BATS One Feed simply provides another option for Distributors to choose from when selecting a product that meets their market data needs. Subscribers who seek a broader market view but do not need complete depth-of-book may select the BATS One Feed while subscribers that seek the complete depth-of-book information may subscribe to the depth-of-book feeds of each individual BATS Exchanges.

Latency. The BATS One Feed is not intended to compete with similar products offered by External Distributors. Rather, it is intended to assist External Distributors in incorporating aggregated and summarized data from the BATS Exchanges into their own market data products that are provided to the end user. Therefore, Distributors will receive the data, who will, in turn, make available BATS One Feed to their end users, either separately or as incorporated into the various market data products they provide. As stated above, Distributors have expressed a desire for a product like the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the administrative costs of repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges.

Notwithstanding the above, the Exchange believes that External Distributors may create a product similar to BATS One Feed based on the market data products offered by the individual BATS Exchanges with minimal latency difference. In order to create the BATS One Feed, the Exchange will receive the individual data feeds from each BATS Exchange and, in turn, aggregate and summarize that data to create the BATS One Feed. This is the same process an External Distributor would undergo should it create a market data product similar to the BATS One Feed to distribute to its end users. In addition, the servers of most External Distributors are likely located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each BATS Exchange on or about the same time the Exchange would for it to create the BATS One Feed. Therefore, the Exchange believes that it will not incur any potential latency advantage that will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Existence of Actual Competition. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings and order flow and sales of market data itself, providing virtually limitless opportunities for entrepreneurs who wish to compete in any or all of those areas, including by producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market.

Competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice also has acknowledged the aggressive competition among exchanges, including for the sale of proprietary market data itself. In announcing that the bid for NYSE Euronext by Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. had been abandoned, Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [44]

It is common for broker-dealers to further exploit this recognized competitive constraint by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [45]

In addition, in the case of products that are distributed through market data vendors, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, vendors will not elect to make available the products described herein unless their customers request them, and customers will not elect to purchase them unless they can be used for profit-generating purposes. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic

[43] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

[44] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[45] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[46] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[47]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives. As stated above, broker-dealers currently have numerous alternative venues for their order flow, including eleven SRO markets, as well as internalizing BDs and various forms of ATSs, including dark pools and ECNs. Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do so or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, and NYSEArca.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless. The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange

[46] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–Nasdaq–2010–110); Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–Nasdaq–2010–111) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger (''because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade execution services are an example of 'joint products' with 'joint costs.'''), attachment at pg. 4, *available at www.sec.gov/comments/34-57917/3457917-12.pdf.*

[47] *See generally* Mark Hirschey, FUNDAMENTALS OF MANAGERIAL ECONOMICS, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced invariable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis . . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' Quarterly Journal of Economics V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, and TracECN. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson-Reuters.

Competitive forces constrain the prices that platforms can charge for non-core market information. A trading platform cannot generate market information unless it receives trade orders. For this reason, a platform can be expected to use its market data product as a tool for attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained elsewhere, this does not enable the owner of such information to exercise monopoly power over that information vis-à-vis firms with the need for such information. Even though market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and thus, in the long run, reduces the quality of the information generated by the exchange.

Competition among platforms has driven the Exchange to improve its platform data offerings and to cater to customers' data needs by proposing the BATS One Feed. The vigor of competition for non-core data information is significant and the Exchange believes that this proposal clearly evidences such competition. The Exchange proposes the BATS One Feed and pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges. The explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data information is highly competitive and continually evolves as products develop and change.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, because vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost is not justified by the returns that any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2014–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2014–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of EDGX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR–EDGX–2014–19 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18126 Filed 7–31–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72686; File No. SR–NYSEArca–2013–127]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendments No. 2 and No. 3, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, No. 2, and No. 3, To List and Trade Shares of Nine Series of the IndexIQ Active ETF Trust Under NYSE Arca Equities Rule 8.600

July 28, 2014.

I. Introduction

On November 18, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the IQ Long/Short Alpha ETF, IQ Bear U.S. Large Cap ETF, IQ Bear U.S. Small Cap ETF, IQ Bear International ETF, IQ Bear Emerging Markets ETF, IQ Bull U.S. Large Cap ETF, IQ Bull U.S. Small Cap ETF, IQ Bull International ETF and IQ Bull Emerging Markets ETF (each a ''Fund'' and, collectively, the ''Funds'') under NYSE Arca Equities Rule 8.600. On November 26, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on December 4, 2013.[4] On January 15, 2014, the Commission extended the time period for Commission action to March 4, 2014.[5] On March 4, 2014, the Commission published for comment an order instituting proceedings under Section 19(b)(2)(B) of the Act (''Order Instituting Proceedings'') to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[6] On April 11, 2014, the Exchange submitted Amendment No. 2 to the proposed rule change.[7] On May 28, 2014, the Commission extended the time period for Commission action to August 1, 2014.[8] The Commission received no comments on the proposed rule change. On July 25, 2014, the Exchange filed Amendment No. 3.[9] This order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

II. Description of the Proposal[10]

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''), which governs the listing and trading of Managed Fund Shares.[11] Each Fund is a series of the IndexIQ Active ETF Trust (''Trust'').[12] IndexIQ Advisors LLC (''Adviser'') is the investment adviser for the Funds, and the Exchange states that the Adviser is not a broker-dealer and is not affiliated with a broker-dealer.[13] The Bank of New York Mellon (''Administrator'') is the administrator, custodian, transfer agent, and securities lending agent for the Funds. ALPS Distributors Inc. (''Distributor'') is the distributor for the Funds.

A. Principal Investments of the Funds Under Normal Circumstances[14]

1. IQ Long/Short Alpha ETF

According to the Exchange, the investment objective of the IQ Long/Short Alpha ETF is to seek capital appreciation. The Exchange states that

[48] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified: (1) How certain holdings will be valued for purposes of calculating a fund's net asset value, and (2) where investors will be able to obtain pricing information for certain underlying holdings.

[4] *See* Securities Exchange Act Release No. 70954 (November 27, 2013), 78 FR 72955 (''Notice'').

[5] *See* Securities Exchange Act Release No. 71309 (January 15, 2014), 79 FR 03657 (January 22, 2014).

[6] *See* Securities Exchange Act Release No. 71645 (March 4, 2014), 79 FR 13349 (March 10, 2014) (''Order Instituting Proceedings'').

[7] In Amendment No. 2, the Exchange supplemented the information that would be provided daily regarding the contents of each Fund's portfolio. Specifically, the Exchange states: ''On a daily basis, the Funds will disclose on *www.indexiq.com* the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the applicable Fund's portfolio.''

[8] *See* Securities Exchange Act Release No. 72265 (May 28, 2014), 79 FR 32008 (June 3, 2014).

[9] In Amendment No. 3, the Exchange addressed the impact of the derivatives held by the Funds on the Funds' arbitrage mechanisms, stating: ''The Adviser believes that there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of each Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when each Fund processes purchases or redemptions of creation units in-kind.''

[10] Additional information regarding the Funds; Shares; investment objective; strategies, methodology and restrictions; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice. *See* Notice, *supra* note 4, and Registration Statement, *infra* note 12, respectively.

[11] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), as amended (''1940 Act''), organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[12] The Trust is registered under the 1940 Act. On September 12, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A relating to the Funds (File Nos. 333–183489 and 811–22739) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trusts under the 1940 Act. *See* Investment Company Act Release No. 30198 (September 10, 2012) (File No. 812–13956) (the ''Exemptive Order'').

[13] *See* Notice, *supra* note 4, 78 FR at 72956. The Exchange also states that, in the event that the Adviser becomes newly affiliated with a broker-dealer or any new adviser or subadviser is a registered broker-dealer or becomes affiliated with a broker-dealer, a firewall will be erected with respect to relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. *See id.*

[14] The Exchange states that the term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization companies [15] by investing in exchange-traded funds (''ETFs'') [16] or swap agreements, options contracts, and futures contracts with economic characteristics similar to those of the ETFs for which they are substituted (such swap agreements, options contracts, and futures contracts, collectively, ''Financial Instruments'').[17] The Exchange also states that the Fund will take long and short positions in U.S.-listed ETFs registered pursuant to the Investment Company Act of 1940 (''1940 Act'') holding primarily U.S. large capitalization equity securities. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.[18]

2. IQ Bear U.S. Large Cap ETF

According to the Exchange, the investment objective of the IQ Bear U.S. Large Cap ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization issuers, by taking short positions in ETFs or Financial Instruments. The Exchange also states that the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily U.S. large capitalization equity securities. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

3. IQ Bear U.S. Small Cap ETF

According to the Exchange, the investment objective of the IQ Bear U.S. Small Cap ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of U.S. small capitalization companies [19] by taking short positions in ETFs or Financial Instruments. Additionally, the Exchange states that the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily U.S. small capitalization equity securities. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

4. IQ Bear International ETF

According to the Exchange, the investment objective of the IQ Bear International ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in developed market countries [20] by taking short positions in ETFs or Financial Instruments. Additionally, the Exchange states that the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily developed market equity securities. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

5. IQ Bear Emerging Markets ETF

According to the Exchange, the investment objective of the IQ Bear Emerging Markets ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in emerging market countries,[21] by taking short positions in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

6. IQ Bull U.S. Large Cap ETF

According to the Exchange, the investment objective of the IQ Bull U.S. Large Cap ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization issuers [22] by investing in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

7. IQ Bull U.S. Small Cap ETF

According to the Exchange, the investment objective of the IQ Bull U.S. Small Cap ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of U.S. small capitalization issuers [23] by investing in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

8. IQ Bull International ETF

According to the Exchange, the investment objective of the IQ Bull International ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in developed market countries [24] by investing in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

9. IQ Bull Emerging Markets ETF

According to the Exchange, the investment objective of the IQ Bull Emerging Markets ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in emerging market countries [25] by investing in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in

[15] According to the Registration Statement, the Adviser considers ''large capitalization companies'' to be those having market capitalizations of at least $5 billion.

[16] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs will all be listed and traded in the U.S. on registered exchanges. The ETFs in which the Funds may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[17] The Exchange represents that all options contracts and futures contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the Intermarket Surveillance Group (''ISG'') or a party to a comprehensive surveillance sharing agreement with the Exchange.

[18] According to the Registration Statement, money market instruments are generally short-term cash instruments that have a remaining maturity of 397 days or less and exhibit high quality credit profiles. These include U.S. Treasury Bills and repurchase agreements.

[19] According to the Registration Statement, the Adviser will consider ''small capitalization companies'' to be those that having market capitalizations of between $300 million and $2 billion.

[20] According to the Registration Statement, developed market countries will generally include Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. To the extent that the Adviser believes that countries should be added or subtracted to the developed markets category, the Adviser may adjust the list of countries accordingly.

[21] According to the Registration Statement, emerging market countries will generally include Brazil, Chile, China, Colombia, the Czech Republic, Egypt, Hungary, India, Indonesia, Malaysia, Mexico, Morocco, Peru, the Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, and Turkey. To the extent that the Adviser believes that countries should be added or subtracted to the emerging markets category, it may adjust the list of countries accordingly.

[22] *See* note 15, *supra.*

[23] *See* note 19, *supra.*

[24] *See* note 20, *supra.*

[25] *See* note 21, *supra.*

money market instruments, according to the Exchange.

B. Other Investments of the Funds (Under Normal Circumstances)

The Exchange states that each Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis. The instruments in which each Fund may invest include: (1) Short-term obligations issued by the U.S. government; (2) negotiable certificates of deposit (''CDs''), fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (3) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's Ratings Group, Inc., or, if unrated, of comparable quality as determined by the Adviser; (4) repurchase agreements (only from or to a commercial bank or a broker-dealer, and only if the repurchase is scheduled to occur within seven days or less); and (5) money market mutual funds. CDs are short-term negotiable obligations of commercial banks.

The Exchange states that each Fund may invest directly in non-ETF equity securities, including U.S.-listed and non-U.S. listed equity securities, provided, however, that all equity securities in which the Funds may invest will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the Intermarket Surveillance Group (''ISG'') or a party to a comprehensive surveillance sharing agreement with the Exchange.

In addition to ETFs, the Funds may invest in U.S.-listed exchange-traded notes [26] and other U.S.-listed exchange-traded products,[27] according to the Exchange.

The Exchange states that certain Funds may use American depositary receipts, European depositary receipts, and Global depositary receipts when, in the discretion of the Adviser, the use of such securities is warranted for liquidity, pricing, timing, or other reasons. The Exchange represents that no Fund will invest more than 10% of its net assets in unsponsored depositary receipts.[28]

C. Fund Investment Restrictions

Each Fund will seek to qualify for treatment as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.[29]

A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A Securities.[30] The Funds will monitor their portfolio liquidity on an ongoing basis to determine whether, in the light of current circumstances, an adequate level of liquidity is being maintained, and the Funds will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities and other illiquid assets.

A Fund will not invest more than 25% of its total assets, directly or indirectly (i.e., through underlying ETFs), in an individual industry, as defined by the Standard Industrial Classification Codes utilized by the Division of Corporate Finance of the Commission.[31] This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities or investments in shares of investment companies.

According to the Registration Statement, a Fund may not purchase or sell commodities or commodity contracts unless those assets have been acquired as a result of the ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts, but this shall not prevent the Fund from purchasing, selling, or entering into financial futures contracts (including futures contracts on indices of securities, interest rates, or currencies), options on financial futures contracts (including futures contracts on indices of securities, interest rates, or currencies), warrants, swaps, forward contracts, foreign currency spot and forward contracts, or other derivative instruments that are not related to physical commodities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[32] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[33] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[34] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last sale information for the Shares and the ETF shares underlying the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. Quotation and last-sale information for options contracts will be available via the Options Price Reporting Authority. Information regarding market price and trading volume of the Shares will be

[26] Exchange-traded notes are securities such as those listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6).

[27] For purposes of this filing, other U.S.-listed exchange-traded products include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200), Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201), Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202), Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203), and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[28] *See* Notice, *supra* note 4, 78 FR at 72960.

[29] 26 U.S.C. 151.

[30] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[31] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[32] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78k–1(a)(1)(C)(iii).

continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time) on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.[35] The Web site information will be publicly available at no charge. The NAV of each Fund will be calculated by the Administrator and determined each business day as of the close of regular trading on the Exchange (ordinarily 4:00 p.m. Eastern Time). The Exchange will obtain a representation from the issuer of the Shares that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.[36] According to the Exchange, information regarding the equity securities and other portfolio securities held by each Fund, as well as the securities that underlie the derivatives held by each Fund, will be available from the national securities exchange trading such securities, automated quotation systems, published or other public sources, or on-line information services.[37] The Portfolio Indicative Value of the Funds, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[38] The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.[39]

The Exchange represents that trading in Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached.[40] Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[41] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser, as the Reporting Authority, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of each Fund's portfolio.[42] The Exchange states that the Adviser is not a broker-dealer and is not affiliated with a broker-dealer.[43] Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[44]

As discussed above, at least 80% of each Fund's assets will be exposed to equity securities of issuers domiciled in the U.S. or in developed or in emerging market countries, by investing in or taking short positions in ETFs or Financial Instruments. According to the Exchange, Financial Instruments are swap agreements, exchange-listed options contracts, and exchange-listed futures contracts with economic characteristics similar to those of the ETFs for which they are substituted. In the Order Instituting Proceedings, the Commission asked for public comment on (1) whether the Disclosed Portfolio of each Fund would include enough information to price the Financial Instruments, which may constitute a high percentage of each Fund's portfolio; and (2) what impact, if any, holding such a high percentage of Financial Instruments would have on the Funds' arbitrage mechanism.[45]

After the Order Instituting Proceedings was published, the Exchange filed Amendment No. 2, which supplemented the information to be made public about the Funds' portfolios, providing that the Disclosed Portfolio for each Fund would include: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the applicable Fund's portfolio. The Exchange states that there will be minimal, if any, impact to the traditional arbitrage mechanism as a result of the use of derivatives and that market makers and participants should be able to value the derivatives held by the Funds as long as the positions are disclosed with relevant information.[46] The Exchange asserts that the price at which Shares trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.[47] In addition, the Exchange asserts that the use of derivatives will not significant affect the settlement or operational aspects of the Fund's arbitrage mechanism.[48]

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of

[35] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[36] *See* Notice, *supra* note 4, 78 FR 72963.

[37] *See id.* at 72962.

[38] The Exchange states that it understands that several major market data vendors display or make widely available PIVs taken from the CTA or other data feeds. *See id.* at 72962, n.29.

[39] *See id.* at 62964.

[40] *See id.* at 72962.

[41] These may include: (1) The extent to which trading is not occurring in the securities or the financial instruments comprising the Disclosed Portfolio of a Fund; and (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. *See id.* at 72963.

[42] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[43] *See* note 13, *supra.*

[44] For a list of the current members of ISG, see *www.isgportal.org.*

[45] *See* Order Instituting Proceedings, *supra* note 6, 78 FR at 13352.

[46] *See* Amendment No. 3, *supra* note 9.

[47] *See id.*

[48] *See id.*

equity securities. In support of this proposal, the Exchange represented that:

(1) The Shares will conform to the initial and continuing listing criteria under NYSE Arca Equities Rule 8.600.

(2) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.

(3) Except for the unsponsored depository receipts referenced above,[49] all equity securities in which the Funds may invest will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Exchange Act,[50] as provided by NYSE Arca Equities Rule 5.3.

(7) Each Fund's investments will be consistent with its respective investment objective.

(8) A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A Securities.

(9) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[51] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendments No. 2 and No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments No. 2 and No. 3 to the proposed rule change are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–127. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–127 and should be submitted on or before August 22, 2014.

V. Accelerated Approval of Proposed Rule Change as Modified by Amendments No. 2 and No. 3

As discussed above, the Exchange submitted Amendment No. 2 to supplement the information to be provided in the Disclosed Portfolios of the Funds. Additionally, the Exchange submitted Amendment No. 3 to address the impact of the Funds' derivatives on the Funds' arbitrage mechanisms. The Commission believes that the Funds' additional disclosures regarding derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday and engage in effective arbitrage as argued by the Exchange in Amendment No. 3, thus removing impediments to a free and open market and protecting investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[52] to approve the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3, prior to the 30th day after the date of publication in the **Federal Register** of notice of Amendments No. 2 and No. 3 of the filing.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[53] that the proposed rule change (SR–NYSEArca–2013–127), as modified by Amendments No. 1, No. 2, and No. 3, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18121 Filed 7–31–14; 8:45 am]

BILLING CODE 8011–01–P

[49] *See* text accompanying note 28, *supra.*

[50] 17 CFR 240.10A–3.

[51] 15 U.S.C. 78f(b)(5).

[52] 15 U.S.C. 78s(b)(2).

[53] 15 U.S.C. 78s(b)(2).

[54] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72681; File No. SR–NYSE–2014–39]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Removing Building Access and Other Restrictions on Traders Conducting Certain Futures and Options Trading on ICE Futures U.S., Inc. in Space Rented From the Exchange

July 28, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 15, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove building access and other restrictions on traders conducting certain futures and options trading on ICE Futures U.S., Inc. (''IFUS'') [4] in space rented from the Exchange (the ''IFUS Trading Floor''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission (''CFTC'').

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove the building access and other restrictions on the IFUS traders conducting certain futures and options trading on the IFUS Trading Floor, currently located in Exchange facilities at 20 Broad Street (the ''IFUS Traders'').[5]

Background

On February 13, 2013, the Exchange filed a proposed rule change to relocate trading of certain futures and options contracts conducted on IFUS from rented space at the New York Mercantile Exchange (''NYMEX'') to trading space at 20 Broad Street New York, New York, commonly known as the ''Blue Room'', and to amend NYSE Rule 6A, which defines the terms ''Trading Floor'' and ''NYSE Amex Options Trading Floor'' (the ''Original Filing'').[6] The Original Filing stated that the IFUS Traders relocating to 20 Broad Street and their clerical employees [7] would only utilize the 18 Broad Street entrance to access the Blue Room [8] and, once inside, be prohibited from entering the Main Room, where most of the NYSE and NYSE MKT LLC (''NYSE MKT'') Equities Floor brokers and all NYSE and NYSE MKT Equities Designated Market Makers (''DMMs'') are located, as well as the NYSE Amex Options trading floor. In addition, the Original Filing represented that the IFUS Traders would sit together in dedicated booth space approximately 40 feet long by 10 feet wide with privacy barriers consisting of eight foot walls on both sides except for the two gated and badge access entry and exit security doors at the front and back of the booth, which are four feet high. A compliance officer from IFUS Market Regulation is also present in the Blue Room performing on-site surveillance on a regular basis.

On June 3, 2013, the Exchange filed a proposed rule change to clarify that the IFUS Traders may, on an as needed basis and only prior to 7 a.m., access the Blue Room via the Exchange's 11 Wall Street facilities, which would entail walking through the Main Room to access the Blue Room, and that the IFUS Traders may access the Blue Room via the Exchange's 11 Wall Street facilities on days that the Exchange is closed (the ''Supplemental Filing'').[9]

Proposed Rule Change

The Exchange now proposes to remove certain restrictions on the IFUS Traders set forth in the Original and Supplemental Filings. In particular, the Exchange proposes to eliminate the building access restrictions, which would allow the IFUS Traders to enter the Exchange's facilities from either the 11 Wall Street or 18 Broad Street entrances. The Exchange further proposes to eliminate the restriction on the IFUS Traders entering or crossing the Main Room in order to access the IFUS Trading Floor. Finally, the Exchange proposes to remove the gated and badge access entry and exit security doors at the front and back of the IFUS Traders' booth (the ''Proposal'').

The Exchange does not believe that removing the restrictions on the IFUS Traders entering or crossing the Main Room would provide the IFUS Traders with an unfair competitive advantage over other market participants. As set forth in the previous filings, IFUS trades its products exclusively on an electronic trading platform. Notwithstanding that there is still a physical IFUS Trading Floor, there is no open outcry trading on

[5] On November 13, 2013, pursuant to the Amended and Restated Agreement and Plan of Merger, dated as of March 19, 2013, by and among IntercontinentalExchange, Inc. (' ICE '), IntercontinentalExchange Group, Inc. (the ''Company''), NYSE Euronext, Braves Merger Sub, Inc. (''Braves Merger Sub'') and NYSE Euronext Holdings LLC (formerly known as Baseball Merger Sub, LLC), Braves Merger Sub was merged with and into ICE and NYSE Euronext was merged with and into NYSE Euronext Holdings (the ''Mergers''). As a result of the Mergers, NYSE Euronext and ICE are wholly-owned subsidiaries of the Company. NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns, among other things, 100% of the equity interest of the Exchange. IFUS is a wholly-owned subsidiary of ICE.

[6] *See* Securities Exchange Act Release Nos. 68996 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR–NYSE–2013–13).

[7] Currently, there are 24 IFUS Traders and 13 clerical staff on the IFUS Trading Floor. At the time of the Original Filing, there were 40 IFUS Traders.

[8] Specifically, the IFUS Traders must use the 18 Broad Street entrance elevator and enter the Trading Floor using the turnstile nearest the Blue Room. The Exchange has been monitoring badge swipes at other locations to identify instances where the IFUS Traders utilize a different entrance and referring those findings to IFUS Compliance for appropriate action. Last year, there were approximately 22 instances in which individual IFUS Traders or their clerical staff used an entrance or turnstile other than 18 Broad entrance and turnstiles authorized for their use. However, IFUS Compliance found that all of these were inadvertent use of either of a wrong turnstile for the 18 Broad St. entrance, another entrance necessitated for use when gaining visitor access or when the 18 Broad St. entrance was temporarily inaccessible, or to access a bathroom, and therefore, chose not to take any disciplinary action.

[9] Certain of the IFUS Traders conduct business on foreign markets on Exchange holidays. *See* Securities Exchange Act Release Nos. 69763 (June 13, 2013), 78 FR 37265 (June 20, 2013) (SR–NYSE–2013–38).

that floor. IFUS lists and trades futures and options on futures on cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, foreign currencies, and certain Russell Indices [10] (the ''IFUS Contracts''). The 24 IFUS Traders (down from 40 last year) [11] utilize the IFUS Trading Floor as a place from which they may accept customer orders for IFUS Contracts by telephone or electronically and enter such orders electronically to the IFUS trading platform. IFUS Traders are prohibited by IFUS rules from orally discussing orders or transactions with each other while on the IFUS Trading Floor. Instead, communications between IFUS Traders on the IFUS Trading Floor must be made via instant message, email, or recorded telephone line. Order tickets are prepared and time-stamped for each customer order. IFUS Traders may also enter orders electronically for their own proprietary account. Four of the 24 IFUS Traders engage in proprietary-only trading, while the rest enter customer orders for execution and engage in proprietary trading on IFUS. While IFUS Traders effect transactions in all IFUS Contracts, they predominantly trade options on cotton futures.[12]

IFUS traders can only conduct trading in IFUS products from within IFUS Trading Floor space via terminals located in the IFUS Trading Floor; they do not have wireless hand-held devices. Accordingly, the IFUS Traders could not conduct any trading in futures from any other location, for example, at an equities trading post in the Main Room. In addition, none of the IFUS Traders are registered to trade any of the securities traded on the Exchange, nor does any have the capability to enter orders in Exchange-traded securities from the IFUS Trading Floor via the IFUS electronic trading system.

The Exchange further notes that there is a limited nexus between products that trade on IFUS and those that trade on the Exchange. The only IFUS Contracts that are related to Exchange-traded products are futures and options on futures on certain Russell indexes, all of which are broad-based indexes as defined in Section 3(a)(55)(C)(vi) of the Securities Exchange Act of 1934.[13] As the Commission previously found, a market participant's ability to manipulate the price of broad-based ETFs, Trust Issued Receipts or related options is limited.[14]

Moreover, given that IFUS Traders represent only a small proportion of IFUS's total trading volume, the Exchange does not believe IFUS Traders would be in possession of any non-public information that could be used by Exchange members to their advantage or to gain an unfair competitive advantage over other market participants. As noted in the previous filings, approximately 83% of IFUS's total daily contract volume is in IFUS energy contracts. The IFUS Traders transact less than 5% of the 17% of IFUS's average daily volume that is not related to energy contracts and a fraction of 1% of the total average daily IFUS volume (which includes the energy contracts transacted on IFUS). Further, pricing information about the products traded on the IFUS Trading Floor—cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, broad-based equity indices and foreign currencies—is contemporaneously and publicly available on Bloomberg and other quotation reporting systems. To the extent there is any correlation between the price movements of the products traded on the IFUS Trading Floor and Exchange-listed companies with exposure to those commodity-based products, the Exchange notes that such information is publicly available and IFUS Traders are not in possession of any non-public information regarding pricing of such products that could be used improperly by the IFUS Traders or Exchange members.

Finally, the Exchange's experience with the IFUS Trading Floor the past year has not given the Exchange reason to believe that there is an increased likelihood of potentially collusive trading. To date, the Financial Industry Regulatory Authority, Inc. (''FINRA'') has not identified any regulatory or other concerns about the IFUS Traders, identified suspicious activity or behavior, or identified instances where confidential order information was compromised or inappropriately used.

The Exchange further notes that important safeguards will remain in place. The IFUS Traders will continue to sit together in segregated booth space with privacy barriers to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders. An IFUS Market Regulation compliance officer will continue to be present performing on-site surveillance on a regular basis. The Exchange's equities and options on-Floor surveillance staff will also continue to be located near the IFUS Trading Floor. Moreover, FINRA has been provided with the names of the IFUS Traders to assist in identifying any potentially violative trading involving the IFUS Traders.[15] The Exchange has reminded its members and member organizations to protect the confidentiality of nonpublic order and trade information, and that members and employees of member organizations should not engage in any trading, order or market related communications with the IFUS Traders or their clerical staff.[16]

In short, based on the limited trading conducted by the IFUS Traders, the extremely negligible trading in related products, the experience with the IFUS Trading Floor during the past year and the significant controls that will remain in place, the Exchange does not believe that prescribing the manner in which the IFUS Traders enter the Exchange's facilities or prohibiting the IFUS Traders from entering or crossing the Main Room on the way to the IFUS Trading Floor serves a necessary regulatory purpose.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,[17] in general, and Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the Proposal is designed to remove impediments to and perfect the

[10] These include the Russell 2000, Russell 1000, and Russell Value and Growth, all of which qualify as broad-based indices. The Exchange understands, however, that the IFUS Traders trade only a small volume of the Russell products and, of that small volume, most is in the Russell 2000 mini-contracts.

[11] No IFUS Traders are members of the Exchange, NYSE MKT or NYSE Amex Options.

[12] *See* Securities Exchange Act Release Nos. 68996 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR–NYSE–2013–13).

[13] 15 U.S.C. 78c(a)(55)(A). IFUS product offerings have historically been benchmark futures and options contracts relating to agricultural products, currencies, and broad-based market indexes. There are no plans to offer single stock futures on IFUS.

[14] *See* Exchange Act Release No. 46213 (July 16, 2002) (SR–Amex 2002–21).

[15] Providing the names of the IFUS Traders to FINRA was for the purpose of regulatory information sharing. Neither the Exchange nor FINRA will be responsible for regulating or surveilling the IFUS Traders' activity, and the IFUS Traders are not subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS.

[16] *See* Member Education Bulletin 2013–5 (March 20, 2013), available at *http://www.nyse.com/nysenotices/nyse/education-bulletins/pdf.action?memo_id=2013-5.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

mechanism of a free and open market and a national market system because it would eliminate restrictions on the manner that IFUS Traders may access the IFUS Trading Floor that are not necessary for the protection of investors or the public interest given that the only securities related to IFUS Contracts are securities based on broad-based indexes. The Exchange further believes that eliminating the building access and other restrictions will enable IFUS Traders to efficiently and effectively conduct business on the IFUS Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange additional flexibility to maximize the use of its trading floor space.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–39 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–39 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18116 Filed 7–31–14; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72692; File No. SR–BATS–2014–022]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Amend the Competitive Liquidity Provider Program

July 28, 2014.

On June 3, 2014, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Interpretation and Policy .03 to Rule 11.8 to establish the Supplemental Competitive Liquidity Provider Program (''Program'') for Exchange Traded Products (''ETPs'') listed on the Exchange for a one year pilot period, and to amend Interpretation and Policy .02 to Rule 11.8, which governs the existing Competitive Liquidity Provider Program (''CLP Program''), to reflect the transition for Exchange-listed ETPs from the existing CLP Program to the proposed Program. The proposed rule change was published for comment in the **Federal Register** on June 13, 2014.[3] The Commission did not receive any comment letters on the proposed rule change. This order grants approval of the proposed rule change.[4]

I. Description of the Proposal

As set forth in more detail in the Notice,[5] the Exchange is proposing to amend its rules to add Interpretation and Policy .03 to Rule 11.8 to establish the Program, which seeks to incentivize certain Market Makers registered with the Exchange (''Market Makers'')[6] as ETP Competitive Liquidity Providers (''ETP CLPs'')[7] to enhance liquidity on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 72346 (Jun. 9, 2014), 79 FR 33982 (''Notice'').

[4] Today the Commission also is granting exemptive relief from Rule 102 under Regulation M concerning the Program. *See* Securities Exchange Act Release No. 72693 (Jul. 28, 2014) (Order Granting a Limited Exemption from Rule 102 of Regulation M Concerning the BATS Exchange, Inc.'s Supplemental Competitive Liquidity Provider Program Pilot Pursuant to Regulation M Rule 102(e)).

[5] *See* Notice, *supra* note 3.

[6] As defined in BATS Rules, the term ''Market Maker'' means a Member that acts as a market maker pursuant to Chapter XI of BATS Rules.

[7] As defined in proposed Interpretation and Policy .03(b)(1) to Rule 11.8, the term ''ETP CLP'' means a Member that electronically enters proprietary orders into the systems and facilities of

the Exchange in certain Exchange-listed ETPs [8] and thereby qualify to receive part of a daily rebate pursuant to the Program (a ''CLP Rebate'').[9] As proposed, the Program will operate for a one year pilot period beginning from the date of implementation of the Program.[10] The Exchange is also proposing to amend Interpretation and Policy .02 to Rule 11.8 (Competitive Liquidity Provider Program) [11] to reflect the transition for Exchange-listed ETPs from the existing CLP Program to the proposed Program.

The Exchange plans to implement the Program and the corresponding amendments to existing Interpretation and Policy .02 to Rule 11.8 on a date that will be circulated in a notice from the BATS Trade Desk.[12] The Exchange proposes to maintain existing Interpretation and Policy .02 in its current form until such implementation, and the Exchange states that it will notify all interested parties of the implementation date of these changes through a notice distributed to all Members of the Exchange.[13]

Summary of the Program

The Program is voluntary and is designed to promote market quality in CLP Securities [14] by allowing a CLP Company [15] to list an eligible CLP Security on the Exchange and, in addition to paying the standard (non-CLP) listing fee as set forth in the fee schedule, a Sponsor [16] may pay a fee (a ''CLP Fee'') in order for the CLP Company, on behalf of a CLP Security, to participate in the Program, which will be credited to the BATS General Fund.[17] The CLP Fee will be used to incentivize one or more ETP CLPs to enhance the market quality of the CLP Security.[18] Subject to the conditions set forth in the proposed rule, the Exchange will pay the CLP Rebate out of the BATS General Fund to one or more ETP CLPs that make a market in the CLP Security.[19]

Securities Eligible for the Program

Under the proposal, for a CLP Company, on behalf of a CLP Security, to be eligible to participate in the Program, the following conditions must be satisfied: (i) The Exchange has accepted the Program application of the CLP Company with respect to the CLP Security and the Exchange has accepted the Program application of at least one ETP CLP in the same CLP Security; (ii) the CLP Security meets all requirements to be listed on the Exchange as an ETP; (iii) the CLP Security meets all Exchange requirements for continued listing at all times the CLP Security participates in the Program; and (iv) while the CLP Security is participating in the Program, on a product-specific Web site, the CLP Company must indicate that the product is in the Program and provide a link to the Exchange's Program Web site.[20] In addition, a CLP Company, on behalf of a CLP Security, is eligible for the Program unless and until such CLP Security has had a consolidated average daily volume (''CADV'') of equal to or greater than one million shares for three consecutive calendar months; however any CLP Security initially listed on the Exchange shall be eligible for the Program for the first six months that it is listed on the Exchange, regardless of the ETP's CADV.[21] Notwithstanding the foregoing, the Exchange proposes that an ETP participating in the CLP Program under BATS Rule 11.8, Interpretation and Policy .02, shall not be eligible for participation in the Program until and unless such ETP is no longer participating in the CLP Program.[22]

Qualifications of ETP CLPs

To qualify as an ETP CLP, a Member must be a registered Market Maker in good standing with the Exchange consistent with Rules 11.5 through 11.8.[23] Further, the Exchange will require each Member seeking to qualify as an ETP CLP to have and maintain: (1) Adequate technology to support electronic trading through the systems and facilities of the Exchange; (2) one or more unique identifiers that identify to the Exchange ETP CLP trading activity in assigned CLP Securities; [24] (3) adequate trading infrastructure to support ETP CLP trading activity, which includes support staff to maintain operational efficiencies in the Program and adequate administrative staff to manage the Member's participation in the Program; (4) quoting and volume performance that demonstrates an ability to meet the ETP CLP quoting requirement in each assigned CLP Security on a daily and monthly basis; and (5) a disciplinary history that is consistent with just and equitable business practices.[25]

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the Exchange and is obligated to maintain a bid or an offer at the NBBO in each assigned CLP Security in round lots consistent with paragraph (i) of Interpretation and Policy .03 to Rule 11.8.

[8] As proposed in Interpretation and Policy .03(b)(4) to Rule 11.8, the term ''ETP'' includes Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts, and Managed Fund Shares, which are defined in Rule 14.11(b), 14.11(c), 14.11(f), and 14.11(i), respectively.

[9] *See* Notice, *supra* note 3, 79 FR at 33982.

[10] *See* proposed Interpretation and Policy .03(p) to Rule 11.8.

[11] The Exchange currently operates the existing CLP Program, which is designed to incentivize certain Market Makers registered with the Exchange as Competitive Liquidity Providers to enhance liquidity on the Exchange in all Exchange-listed securities, including ETFs. *See* Securities Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051) (order approving proposed rule change to implement the Competitive Liquidity Provider Program). *See also* Securities Exchange Act Release Nos. 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR–BATS–2012–011) (Notice of filing and immediate effectiveness of proposed rule change adopting rebates for the CLP Program); 67854 (September 13, 2012), 77 FR 58198 (September 19, 2012) (SR–BATS–2012–036) (Notice of filing and immediate effectiveness of proposed rule change related to fees applicable to the CLP Program); 69190 (March 20, 2013), 78 FR 18384 (March 26, 2013) (SR–BATS–2013–005) (Order approving proposed rule change to modify the CLP Program to, among other things, modify the calculation of Size Event Tests); 69857 (June 25, 2013), 78 FR 39392 (July 1, 2013) (SR–BATS–2013–037) (Notice of filing and immediate effectiveness of a proposed rule change to amend the requirements of the CLP Program); 70865 (November 13, 2013), 78 FR 69509 (November 19, 2013) (SR–BATS–2013–057) (Notice of filing and immediate effectiveness of a proposed rule change to amend the CLP Program); and 71284 (January 10, 2014), 79 FR 2921 (January 16, 2014) (SR–BATS–2014–002) (Notice of filing and immediate effectiveness of a proposed rule change to extend the applicability of the CLP Program).

[12] *See* Notice, *supra* note 3, 79 FR at 33982.

[13] *Id.* The Exchange states that it is proposing to provide notice of the implementation date through a notice rather than implementing the changes to the rule immediately upon approval by the Commission in order to provide the Exchange with the flexibility necessary to ensure an uninterrupted transition from the CLP Program to the Program. *Id.*

[14] As defined in proposed Interpretation and Policy .03(b)(3) to Rule 11.8, the term ''CLP Security'' means an issue of or series of ETP securities issued by a CLP Company that meets all of the requirements to be listed on the Exchange as an ETP pursuant to Rule 14.11.

[15] As defined in proposed Interpretation and Policy .03(b)(2) to Rule 11.8, the term ''CLP Company'' means the trust or company housing the ETP or, if the ETP is not a series of a trust or company, then the ETP itself.

[16] As defined in proposed Interpretation and Policy .03(b)(5) to Rule 11.8, ''Sponsor'' means the registered investment adviser that provides investment management services to a CLP Company or any of such adviser's parents or subsidiaries.

[17] *See* proposed Interpretation and Policy .03(a) to Rule 11.8.

[18] *Id.*

[19] *Id.*

[20] *See* proposed Interpretation and Policy .03(d)(1) to Rule 11.8.

[21] *See* proposed Interpretation and Policy .03(d)(3) to Rule 11.8.

[22] *Id.*

[23] *See* proposed Interpretation and Policy .03(f) to Rule 11.8.

[24] A Member may not use such unique identifiers for trading activity at the Exchange in assigned CLP Securities that is not ETP CLP trading activity, but may use the same unique identifiers for trading activity in securities not assigned to an ETP CLP. If a Member does not identify to the Exchange the unique identifier to be used for ETP CLP trading activity, the Member will not receive credit for such ETP CLP trading. *See* proposed Interpretation and Policy .03(f)(2) to Rule 11.8.

[25] *See* Proposed Interpretation and Policy .03(f) to Rule 11.8.

Application

Under the proposal, any entity that wishes to participate in the Program must submit an application in the form prescribed by the Exchange, including both CLP Companies on behalf of a CLP Security and ETP CLPs.[26]

The proposed rule sets forth a specific application process for ETP CLPs.[27] To become an ETP CLP, a Member must submit an application form with all supporting documentation to the Exchange.[28] The Exchange will determine whether an applicant is qualified to become an ETP CLP based on the qualifications set forth in the rule, as described above.[29] After an applicant submits an ETP CLP application to the Exchange, with supporting documentation, the Exchange shall notify the applicant Member of its decision.[30] If an applicant is approved by the Exchange to receive ETP CLP status, such applicant must establish connectivity with relevant Exchange systems before such applicant will be permitted to trade as an ETP CLP on the Exchange.[31] In the event an applicant is disapproved by the Exchange, such applicant may seek review under Chapter X of the Exchange's Rules governing adverse action and/or reapply for ETP CLP status at least three (3) calendar months following the month in which the applicant received the disapproval notice from the Exchange.[32]

Assignment of CLP Securities

The Exchange, in its discretion, will assign to the ETP CLP one or more CLP Securities for ETP CLP trading purposes.[33] The Exchange shall determine the number of CLP Securities assigned to each ETP CLP.[34] The Exchange, in its discretion, will assign one or more ETP CLPs to each CLP Security subject to the Program, depending upon the trading activity of the CLP Security.[35]

ETP CLP Withdrawal & Reallocation

An ETP CLP may withdraw from the status of an ETP CLP by providing written notice to the Exchange. Such withdrawal shall become effective when those CLP Securities assigned to the withdrawing ETP CLP are reassigned to another ETP CLP. After the Exchange receives the notice of withdrawal from the withdrawing ETP CLP, the Exchange will reassign such CLP Securities as soon as practicable but no later than thirty (30) days after the date said notice is received by the Exchange. In the event the reassignment of CLP Securities takes longer than the 30-day period, the withdrawing ETP CLP will have no obligations under Interpretation and Policy .03 and will not be held responsible for any matters concerning its previously assigned CLP Securities upon termination of this 30-day period.[36]

CLP Security Withdrawal & Renewal; Termination

A CLP Company may, on behalf of a CLP Security, after being in the Program for not less than two consecutive quarters, but less than one year, voluntarily withdraw from the Program on a quarterly basis. The CLP Company must notify the Exchange in writing, not less than one month prior to withdrawing from the Program. The Exchange, however, does retain discretion to allow a CLP Company to withdraw from the Program earlier. In making such a determination, the Exchange may take into account the volume and price movements in the CLP Security; the liquidity, size quoted, and quality of the market in the CLP Security; and any other relevant factors.[37] After a CLP Company, on behalf of a CLP Security, is in the Program for one year or more, it may voluntarily withdraw from the Program on a monthly basis, so long as the CLP Company notifies the Exchange in writing not less than one month prior to withdrawing from the Program.[38] After a CLP Company, on behalf of a CLP Security, is in the Program for one year, the Program and all obligations and requirements of the Program will automatically continue on an annual basis unless: (1) The Exchange terminates the Program by providing not less than one month prior notice of intent to terminate or the pilot Program is not extended or made permanent pursuant to a proposed rule change subject to filing with or approval by the Commission; (2) the CLP Company withdraws from the Program pursuant to the withdrawal rules described above; or (3) the CLP Company is terminated from the Program pursuant to subsection (n) of the proposal.[39]

Interpretation and Policy .03(n) to Rule 11.8 states that the Program will terminate with respect to a CLP Security under the following circumstances: (a) A CLP Security sustains a CADV of one million shares or more for three consecutive months; however, any CLP Security initially listed on the Exchange shall be eligible for the Program for the first six months that it is listed on the Exchange, regardless of the CLP Security's CADV; (b) a CLP Company, on behalf of a CLP Security, withdraws from the Program, is no longer eligible to be in the Program pursuant to the proposed rule, or its Sponsor ceases to make CLP Fee payments to the Exchange; (c) a CLP Security is delisted or is no longer eligible for the Program; or (d) a CLP Security does not, for two consecutive quarters, have at least one ETP CLP that is eligible for CLP Rebate.[40] The termination of a CLP Company, CLP Security, or ETP CLP does not preclude the Exchange from allowing re-entry into the Program where the Exchange deems such re-entry as proper.[41]

Web Site Disclosures

The Exchange will provide notification on its Web site regarding the following: (i) Acceptance of a CLP Company, on behalf of a CLP Security, and an ETP CLP into the Program; (ii) the total number of CLP Securities that any one CLP Company may have in the Program; (iii) the names of CLP Securities and the ETP CLP(s) in each CLP Security, the dates that a CLP Company, on behalf of a CLP Security, commences participation in and withdraws or is terminated from the Program, and the name of each CLP Company and its associated CLP Security(ies); (iv) a statement about the Program that sets forth a general description of the Program as implemented on a pilot basis and a fair and balanced summation of the potentially positive aspects of the Program (*e.g.,* enhancement of liquidity and market quality in CLP Securities) as well as the potentially negative aspects and risks of the Program (*e.g.,* possible

[26] *See* Proposed Interpretation and Policy .03(c)(1) to Rule 11.8.

[27] *See* Proposed Interpretation and Policy .03(g) to Rule 11.8.

[28] *See* Proposed Interpretation and Policy .03(g)(1) to Rule 11.8.

[29] *See* Proposed Interpretation and Policy .03(g)(2) to Rule 11.8.

[30] *See* Proposed Interpretation and Policy .03(g)(3) to Rule 11.8.

[31] *See* Proposed Interpretation and Policy .03(g)(4) to Rule 11.8.

[32] *See* Proposed Interpretation and Policy .03(g)(5) to Rule 11.8.

[33] *See* proposed Interpretation and Policy .03(j)(1) to Rule 11.8.

[34] *Id.*

[35] *See* proposed Interpretation and Policy .03(j)(2) to Rule 11.8.

[36] *See* proposed Interpretation and Policy .03(h) to Rule 11.8.

[37] *See* proposed Interpretation and Policy .03(c)(2)(A) to Rule 11.8.

[38] *See* proposed Interpretation and Policy .03(c)(2)(B) to Rule 11.8.

[39] *See* proposed Interpretation and Policy .03(c)(3) to Rule 11.8.

[40] *See* proposed Interpretation and Policy .03(n)(1) to Rule 11.8.

[41] *See* proposed Interpretation and Policy .03(n)(2) to Rule 11.8.

lack of liquidity and negative price impact on CLP Securities that are withdrawn or are terminated from the ETP CLP Program), and indicates how interested parties can get additional information about CLP Securities in the Program; and (v) the intent of a CLP Company, on behalf of a CLP Security, or ETP CLP to withdraw from the Program, and the date of actual withdrawal or termination from the Program.[42]

In addition, a CLP Company that, on behalf of a CLP Security, is approved to participate in the Program shall issue a press release to the public when the CLP Company, on behalf of a CLP Security, commences or ceases participation in the Program.[43] The press release shall be in a form and manner prescribed by the Exchange, and, if practicable, shall be issued at least two days before commencing or ceasing participation in the Program.[44] The CLP Company shall dedicate space on its Web site, or, if it does not have a Web site, on the Web site of the Sponsor of the CLP Security, which space will (i) include any such press releases, and (ii) provide a hyperlink to the dedicated page on the Exchange's Web site that describes the Program.[45]

CLP Company Fees

A CLP Company participating in the Program shall incur an annual basic CLP Fee of $10,000 per CLP Security. The basic CLP Fee must be paid to the Exchange prospectively on a quarterly basis.[46]

A CLP Company may also incur an annual supplemental CLP Fee per CLP Security. The basic CLP Fee and supplemental CLP Fee, when combined, may not exceed $100,000 per year. The supplemental CLP Fee is a fee selected by a CLP Company on an annual basis, if at all. The supplemental CLP Fee must be paid to the Exchange prospectively on a quarterly basis. The amount of the supplemental CLP Fee, if any, will be determined by the CLP Company initially per CLP Security and will remain the same for the period of a year. The Exchange will provide notification on its Web site regarding the amount, if any, of any supplemental CLP Fee determined by a CLP Company per CLP Security.[47]

The CLP Fee is in addition to the standard (non-CLP) Exchange listing fee applicable to the CLP Security and does not offset such standard listing fee.[48] For a CLP Security housed by a CLP Company that has a Sponsor or Sponsors, the CLP Fee with respect to the CLP Security shall be paid by the Sponsor or Sponsors of such CLP Security.[49] The Exchange will prospectively bill each CLP Company for the quarterly CLP Fee for each CLP Security.[50] CLP Fees (both basic and supplemental) will be credited to the BATS General Fund.[51]

ETP CLP Quoting Requirements

ETP CLPs will be subject to both a daily quoting requirement in order to be eligible to receive financial incentives and a monthly quoting requirement in order to remain qualified as an ETP CLP. Any ETP CLP that meets the daily quoting requirement set forth below will be eligible to receive a CLP Rebate for each day's quoting activity. An ETP CLP that does not meet the ETP CLP monthly quoting requirement is subject to the non-regulatory penalties described below.[52]

The Exchange will measure the performance of an ETP CLP in assigned CLP Securities by calculating Size Event Tests (''SETs'') between 9:25 a.m. and 4:05 p.m. on every day on which the Exchange is open for business. The Exchange will measure each ETP CLP's quoted size, excluding odd lots, at the National Best Bid (''NBB'') and National Best Offer (''NBO'') at least once per second to determine SETs. The three ETP CLPs with the greatest aggregate size at the NBB at the time of each SET (a ''Bid SET'') will be considered to have a winning Bid SET (a ''Winning Bid SET''). In the event of a tie, all ETP CLPs with the same aggregate size at the NBB will be considered to have a Winning Bid SET if there are two or less CLPs that have greater aggregate size at the NBB. Of the ETP CLPs with a Winning Bid SET for a particular Bid SET, the ETP CLPs with the greatest aggregate size at the NBB will receive three Bid SET credits (''Bid SET Credits''); the ETP CLPs with the second greatest aggregate size at the NBB will receive two Bid SET Credits; and the ETP CLPs with the third greatest aggregate size at the NBB will receive one Bid SET Credit. Separately, the three ETP CLPs with the greatest aggregate size at the NBO at the time of each SET (an ''Offer SET'') will be considered to have a winning Offer SET (a ''Winning Offer SET''). In the event of a tie, all ETP CLPs with the same aggregate size at the NBO will be considered to have a Winning Offer SET if there are two or less CLPs that have greater aggregate size at the NBO. Of the ETP CLPs with a Winning Offer SET for a particular Offer SET, the ETP CLPs with the greatest aggregate size at the NBO will receive three Offer SET credits (''Offer SET Credits''); the ETP CLPs with the second greatest aggregate size at the NBO will receive two Offer SET Credits; and the ETP CLPs with the third greatest aggregate size at the NBO will receive one Offer SET Credit.[53]

An ETP CLP must be quoting, at a minimum, five round lots (usually 500 shares), excluding odd lots, of the CLP Security, at the NBB or NBO, respectively, at the time of a SET in order to have a Winning Bid SET or a Winning Offer SET.[54] In addition, in order for an ETP CLP to have a Winning Bid SET during Regular Trading Hours,[55] the ETP CLP must also be quoting at least a displayed round lot offer, excluding odd lots, at a price at or within 1.2% of the ETP CLP's bid at the time of the SET.[56] Similarly, in order for an ETP CLP to have a Winning Offer SET during Regular Trading Hours, the ETP CLP must be quoting at least a displayed round lot offer, excluding odd lots, at a price at or within 1.2% of the ETP CLP's offer at the time of the SET.[57]

In order to meet the daily quoting requirement, an ETP CLP must have Winning Bid SETs or Winning Offer SETs equal to at least 10% of the total Bid SETs or total Offer SETs, respectively, on any trading day in order to be eligible for any CLP Rebate (each such ETP CLP, an ''Eligible ETP CLP'') for a CLP Security. Eligible ETP CLPs will be ranked according to the number of Bid SET Credits and Offer SET Credits each trading day, and only the Eligible ETP CLP(s) ranked number one and the Eligible ETP CLP(s) ranked number two in each of the Bid SET

[42] *See* proposed Interpretation and Policy .03(o) to Rule 11.8.

[43] *See* proposed Interpretation and Policy .03(d)(4) to Rule 11.8.

[44] *Id.*

[45] *Id.*

[46] *See* proposed Interpretation and Policy .03(d)(2)(A) to Rule 11.8.

[47] *See* proposed Interpretation and Policy .03(d)(2)(B) to Rule 11.8.

[48] *See* proposed Interpretation and Policy .03(d)(2)(C) to Rule 11.8.

[49] *See* proposed Interpretation and Policy .03(d)(2)(C)(i) to Rule 11.8. *See also* proposed Interpretation and Policy .03(b)(2) to Rule 11.8.

[50] *See* proposed Interpretation and Policy .03(d)(2)(D) to Rule 11.8.

[51] *See* proposed Interpretation and Policy .03(d)(2)(E) to Rule 11.8.

[52] *See* proposed Interpretation and Policy .03(e) to Rule 11.8.

[53] *See* proposed Interpretation and Policy .03(i)(1) to Rule 11.8. In the Notice, the Exchange provided examples of how SET Credits are distributed. *See* Notice, *supra* note 3, 79 FR at 33985.

[54] *See* proposed Interpretation and Policy .03(i)(4) to Rule 11.8.

[55] As defined in BATS Rule 1.5(w), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[56] *See* proposed Interpretation and Policy .03(i)(5) to Rule 11.8.

[57] *Id.*

Credits and Offer SET Credits will receive the CLP Rebate.[58]

In order to meet the monthly quoting requirements, an ETP CLP must be quoting at the NBB or the NBO 10% of the time that the Exchange calculates SETs.[59]

For purposes of calculating whether an ETP CLP is in compliance with its ETP CLP quoting requirements, the ETP CLP must post displayed liquidity in round lots in its assigned CLP Securities at the NBB or the NBO.[60] An ETP CLP may post non-displayed liquidity; however, such liquidity will not be counted as credit towards the ETP CLP quoting requirements.[61] The ETP CLP shall not be subject to any minimum or maximum quoting size requirement in assigned CLP Securities (other than requirements relating to Winning SETs as described above) apart from the requirement that an order be for at least one round lot.[62] The ETP CLP quoting requirements will be measured by utilizing the unique identifiers that the Member has identified for ETP CLP trading activity.[63]

ETP CLPs may only enter orders electronically directly into Exchange systems and facilities designated for this purpose and all ETP CLP orders must only be for the proprietary account of the CLP Member.[64]

CLP Rebate

As described above, pursuant to the Program, the Exchange will measure the performance of ETP CLPs in CLP Securities by calculating SETs between 9:25 a.m. and 4:05 p.m. on every day on which the Exchange is open for business. The amount of the total daily CLP Rebate available will be equal to one quarter of the total annual CLP Fees (basic and supplemental combined) for the CLP Security divided by the number of trading days in the current quarter.[65]

The Eligible CLPs with the highest and second highest number of Bid SET Credits will receive 60% and 40%, respectively, of half of the daily CLP Rebate for the CLP Security.[66] Similarly, the Eligible CLPs with the highest and second highest number of Offer SET Credits will receive 60% and 40%, respectively, of half of the daily CLP Rebate for the CLP Security.[67] In the event that there is only one Eligible ETP CLP for the bid or offer portion of the CLP Rebate for a CLP Security, such Eligible ETP CLP will receive 100% of such rebate.[68] In the event that multiple Eligible ETP CLPs have an equal number of Bid SET Credits or Offer SET Credits, the Eligible ETP CLP with the highest executed volume in the CLP Security will be awarded the greater portion of the CLP Rebate.[69] Where no ETP CLPs are eligible for the bid or offer portion of the CLP Rebate, no CLP Rebate will be awarded to any ETP CLP and no refund will be provided to the applicable CLP Company or its Sponsor.[70]

Non-Regulatory Penalties

If an ETP CLP fails to meet the ETP CLP quoting requirements, the Exchange may impose certain non-regulatory penalties on the ETP CLP. First, if, between 9:25 a.m. and 4:05 p.m. on any day on which the Exchange is open for business, an ETP CLP fails to meet its daily quoting requirement by failing to have at least 10% of the Winning Bid SETs or Winning Offer SETs for that trading day, the ETP CLP will not be eligible to receive a CLP Rebate for that day's quoting activity in that particular assigned CLP Security.[71] Second, if an ETP CLP fails to meet its monthly quoting requirement for three consecutive months in any assigned CLP Security, the ETP CLP will be at risk of losing its ETP CLP status, and the Exchange may, in its discretion, take the following non-regulatory actions: (i) Revoke the assignment of the affected CLP Security(ies) and/or one or more additional unaffected CLP Securities; or (ii) disqualify a Member's status as an ETP CLP.[72]

The Exchange shall determine if and when a Member is disqualified from its status as an ETP CLP.[73] One calendar month prior to any such determination, the Exchange will notify the ETP CLP of such impending disqualification in writing.[74] If the ETP CLP fails to meet the monthly quoting requirements as described above for a third consecutive month in a particular CLP Security, the ETP CLP may be disqualified from ETP CLP status.[75] When disqualification determinations are made, the Exchange will provide a disqualification notice to the Member informing such Member that it has been disqualified as an ETP CLP.[76] In the event a Member is disqualified from its status as an ETP CLP, such Member may re-apply for ETP CLP status in accordance with the proposed rules, and such application process shall occur at least three calendar months following the month in which such Member received its disqualification notice.[77] Further, in the event a Member is determined to be ineligible for the CLP Rebate for failure to meet its daily quoting obligation or is disqualified from its status as an ETP CLP, such Member may seek review under Chapter X of the Exchange's Rules governing adverse action.[78]

Program Implementation on a Pilot Basis

The Exchange proposes that the Commission approve the Program for a pilot period of one year from the date of implementation, which shall occur no later than 90 days after Commission approval of the proposal (the date of which will be circulated in a notice from BATS Trade Desk).[79] During the pilot, the Exchange will periodically provide information to the Commission about market quality with respect to the Program. During the pilot, the Exchange will submit monthly reports to the Commission about market quality with respect to the Program, which reports will endeavor to compare, to the extent practicable, securities before and after they are in the Program, including those

[58] *See* proposed Interpretation and Policy .03(i)(1)(A) to Rule 11.8.

[59] *See* proposed Interpretation and Policy .03(i)(1)(B) to Rule 11.8.

[60] *See* proposed Interpretation and Policy .03(i)(2) to Rule 11.8.

[61] *See* proposed Interpretation and Policy .03(i)(3) to Rule 11.8.

[62] *See* proposed Interpretation and Policy .03(i)(4) to Rule 11.8.

[63] *Id.*

[64] *See* proposed Interpretation and Policy .03(k) to Rule 11.8.

[65] *See* proposed Interpretation and Policy .03(m)(1) to Rule 11.8. In the Notice, the Exchange provides the following example: where the total CLP Fees for a CLP Security is $64,000 and there are 64 trading days in the current quarter, the total CLP Rebate for the CLP Security would be $250 (($64,000/4)/64). *See* Notice, *supra* note 3, 79 FR at 33986.

[66] *See* proposed Interpretation and Policy .03(m)(1) to Rule 11.8.

[67] *Id.*

[68] *Id.*

[69] *Id.* Specifically, if the tie is for the most Bid (Offer) SET Credits, the Eligible ETP CLP with the highest executed volume in the CLP Security will receive 60% of the applicable portion of the CLP Rebate and the Eligible ETP CLP with the second highest executed volume in the CLP Security will receive 40% and no other Eligible ETOP CLPs will receive any portion of the CLP Rebate. Similarly, where the tie is for the second most Bid (Offer) SET Credits, the Eligible ETP CLP with the highest executed volume in the CLP Security will receive 40% of the of the applicable portion of the CLP Rebate and no other Eligible CLPs with equal or less Bid (Offer) SET Credits will receive any portion of the CLP Rebate. *See* Notice, *supra* note 3, 79 FR at 33986.

[70] *See* proposed Interpretation and Policy .03(m)(1) to Rule 11.8.

[71] *See* proposed Interpretation and Policy .03(l)(1)(A) to Rule 11.8.

[72] *See* proposed Interpretation and Policy .03(l)(1)(B) to Rule 11.8.

[73] *See* proposed Interpretation and Policy .03(l)(2) to Rule 11.8.

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *See* proposed Interpretation and Policy .03(l)(3) to Rule 11.8.

[78] *Id.*

[79] *See* Notice, *supra* note 3, 79 FR at 33982.

securities that ''graduate'' from the Program or, where no securities have ''graduated'' from the Program, securities that have ''graduated'' from comparable programs at other exchanges to the extent that such securities exist.[80] Such monthly reports will include information regarding the Program which will enable the Exchange, the Commission, and the public to better analyze the effectiveness of the Program, such as: (i) Rule 605 metrics; [81] (ii) volume metrics; (iii) number of CLPs in target securities; (iv) spread size; and (v) availability of shares at the NBBO.[82] The Exchange states that it will endeavor to provide similar data to the Commission about comparable ETPs that are listed on the Exchange that are not in the Program, and any other Program-related data requested by the Commission for the purpose of evaluating the efficacy of the Program.[83] The Exchange will post the monthly reports on its Web site, and the first report will be submitted within sixty days after the Program becomes operative.[84]

Surveillance

The Exchange states that its surveillance procedures are adequate to properly monitor the trading of all securities trading on the Exchange, including ETPs participating in the Program, during all trading sessions, and to detect and deter violations of Exchange rules and applicable federal securities laws.[85] The Exchange states that it may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement, and from listed CLP Companies and public and non-public data sources such as, for example, Bloomberg.[86]

Changes to Interpretation and Policy .02 to Rule 11.8

The Exchange is also proposing to make certain changes to paragraph (d)(2) of Interpretation and Policy .02 to Rule 11.8, which governs ETP participation in the existing CLP Program. The Exchange states that these changes are designed to create a ''sunset'' period for any ETPs that are currently participating in the CLP Program pursuant to Interpretation and Policy .02 to Rule 11.8.[87] Specifically, the proposed rule change will allow any ETP listed on the Exchange prior to the implementation of Rule 11.8(e), which governs the Exchange's Lead Market Maker Program,[88] that is participating in the CLP Program to continue to participate in the CLP Program until the first of the following to occur: (i) Such security has had a CADV of equal to or greater than two million shares for two consecutive calendar months during the first three years the security is subject to the CLP Program, provided, however, that any ETP initially listed on the Exchange shall be eligible for the CLP Program for the first six months that it is listed on the Exchange, regardless of the ETP's CADV; (ii) such security has been subject to the CLP Program for three years; or (3) December 31, 2014.[89] Thus, all ETPs participating in the CLP Program would no longer be eligible to participate in such program after December 31, 2014.

II. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, as discussed below, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[90] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[91] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Further, as required by Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.[92]

The Program, as proposed to be implemented on a pilot basis, is designed to enhance the market quality for certain lower volume ETPs participating in the Program by incentivizing Market Makers to take ETP CLP assignments in such ETPs by offering an alternative fee structure for such ETP CLPs. As proposed by the Exchange, each ETP CLP must comply with a monthly quoting requirement in order to remain qualified as an ETP CLP, and must comply with a daily quoting requirement in order to be eligible for the daily CLP Rebates, which are higher than the standard quoting requirements applicable to Market Makers on the Exchange.[93] Specifically, with respect to the daily quoting requirement, the three ETP CLPs with the greatest aggregate size at the NBB or NBO at each SET will be considered to have a Winning Bid (Offer) SET, provided each ETP CLP is quoting at least 500 shares of the ETP at the NBB (NBO) and quoting at least 100 shares on the other side of the market at a price at or within 1.2% of such ETP CLP's best bid (offer). The ETP CLPs with a Winning Bid (Offer) SET for a particular Bid (Offer) SET will each receive an amount of Bid (Offer) Set Credits that is based upon each ETP CLP's quoted aggregate size at the NBB (NBO). The ETP CLPs with the highest and second highest number of Bid (Offer) SET Credits each day will receive a portion of the daily CLP Rebate, provided that such ETP CLPs have Winning Bid (Offer) SETs equal to at least 10% of the total Bid (Offer) SETs on any trading day. With respect to the monthly quoting requirement, an ETP CLP must be quoting at least 100 shares at the NBB or NBO at least 10% of the time that the Exchange is calculating Bid (Offer) SETs. Thus, the proposal is designed to incentivize both quoting frequency at the NBBO and quoted size at the NBBO, by conditioning eligibility for ETP CLP status, eligibility for the daily CLP Rebate, and allocation of the daily CLP Rebate on whether an ETP CLP meets or exceeds various quoting requirements. In addition, the Program is separately designed to incentivize ETP CLPs to compete with each other to receive the CLP Rebates, as only the eligible ETP CLPs with the highest and second highest numbers of Bid (Offer) SET Credits will receive a portion of the daily CLP Rebate, and if multiple ETP

[80] *Id.* at 33982–3.

[81] 17 CFR 242.605.

[82] *See* Notice, *supra* note 3, 79 FR at 33983.

[83] *Id.*

[84] *Id.*

[85] *Id.* at 33987.

[86] *Id.*

[87] *Id.*

[88] *See* Securities Exchange Act Release No. 72020 (April 25, 2014), 79 FR 24807 (May 1, 2014) (SR–BATS–2014–015). The Lead Market Maker Program was implemented on June 2, 2014. *See* Notice, *supra* note 3, 79 FR at 33982.

[89] *See* proposed Interpretation and Policy .02(d)(2) to Rule 11.8.

[90] 15 U.S.C. 78f(b)(4).

[91] 15 U.S.C. 78f(b)(5).

[92] *See* 15 U.S.C. 78c(f).

[93] *See* BATS Rule 11.8(d) (setting forth the quoting requirements and obligations of Market Makers).

CLPs have an equal number of Bid (Offer) SET Credits, the ETP CLP with the higher executed volume in the CLP Security on the Exchange on the particular trading day will be awarded the applicable portion of the daily CLP Rebate. As a result, the proposal has the potential to improve the market quality of the ETPs that participate in the Program by encouraging ETP CLPs to provide liquidity in such ETPs consistent with the performance standards. This potential improved market quality, were it to occur, could benefit investors in the form of enhanced liquidity, narrowed spreads, and reduced transaction costs.[94]

In addition, because the quoted bid-ask spread in a security represents one of the main drivers of transaction costs for investors, and because high price volatility should generally deter investors from trading low-liquidity ETPs, the Program, were the potential benefits of the program to occur, should facilitate a more-efficient and less-uncertain trading environment for investors.[95] Furthermore, were the potential benefits of the Program to occur, improving the liquidity of certain low-volume ETPs may lead to both an overall increase in ETP trading volume and a redistribution of trading volume toward lower-volume ETPs that would not otherwise attract sufficient liquidity to successfully participate in the market.

While the Commission believes that the Program has the potential to improve market quality of the CLP Securities participating in the Program, the Commission is concerned about unintended consequences of the Program. For example, the Program could have the potential to distort market forces because the Program may act to artificially influence trading in ETPs that otherwise would not be traded. Similarly, the Commission recognizes concerns about the potential negative impact on a CLP Security participating in the Program, such as reduced liquidity and wider spreads, when a CLP Company is withdrawn or terminated from the Program. While the Commission is mindful of these concerns, the Commission believes, for the reasons described below, that certain aspects of the Program could help mitigate these concerns.

First, the proposal contains disclosure provisions that will help to alert and educate potential and existing investors in the CLP Securities participating in the Program about the Program. Specifically, the Exchange will disclose on its Web site the following information: (i) The names of CLP Securities and the ETP CLP(s) in each CLP Security; (ii) the dates that a CLP Company, on behalf of a CLP Security, commences participation in and withdraws or is terminated from the Program; (iii) the name of each CLP Company and the associated CLP Securities on behalf of which it is participating in the Program; (iv) the acceptance of a CLP Company, on behalf of a CLP Security, and an ETP CLP into the Program; (v) the intent of a CLP Company, on behalf of a CLP Security, or ETP CLP to withdraw from the Program, and the date of actual withdrawal or termination from the ETP CLP Program; (vi) the total number of CLP Securities that any one CLP Company may have in the ETP CLP Program; and (vii) for each CLP Security, the amount, if any, of the supplemental CLP Fee determined by a CLP Company per CLP Security that would be in addition to the fixed basic CLP Fee of $10,000. The Exchange also will include on its Web site a description of the Program, as implemented on a pilot basis, including a fair and balanced summation of the potentially positive aspects of the Program, as well as the potentially negative aspects and risks that may be attendant with an ETP's participation in the Program. Furthermore, a CLP Company will be required to disclose on a product-specific Web site for each CLP Security that the CLP Security is participating in the Program and will be required to provide a link on that Web site to the Exchange's Program Web site. Finally, a CLP Company that, on behalf of a CLP Security, is approved to participate in the Program will be required to issue a press release to the public when a CLP Company, on behalf of a CLP security, commences or ceases participation in the Program, to post such press release on its Web site (or if it does not have a Web site, on the Web site of the Sponsor of the CLP Security), and to provide on its Web site a hyperlink to the Exchange's Web page describing the Program. This disclosure will help to inform investors and other market participants which securities are participating in the Program, which ETP CLPs are assigned to each CLP Security, the amount of CLP Fees a CLP Company will incur as a result of participating in the Program, the amount of the daily CLP Rebates that ETP CLPs may be eligible to receive from the Exchange under the Program, and the potential benefits and risks of the Program. A wide variety of ETPs are currently listed and trading today, and the Commission believes that such disclosure could be helpful for investors and other market participants to discern which ETPs listed on the Exchange are and are not subject to the Program and to make informed investment decisions with respect to ETPs.[96]

Second, the Program is targeted at a subset of ETPs, namely those ETPs that are generally less liquid and which the Exchange believes might benefit most from the Program. Specifically, as proposed, ETPs that are otherwise eligible for the Program will not be eligible if they have a CADV of equal to or greater than 1,000,000 shares for three consecutive calendar months.[97] Likewise, the Program will terminate with respect to a particular CLP Security if the security sustains a CADV of 1,000,000 shares or more for three consecutive months.[98]

Finally, as proposed by the Exchange, the Program will be limited to a one-year pilot. The Commission believes that it is important to implement the Program as a pilot. Operating the Program as a pilot will allow assessment

[94] In support of the proposal, the Exchange argues that the Program will, among other things, lower transaction costs and enhance liquidity in both ETPs and their components, making both more attractive to a broader range of investors, and that, in so doing, the Program will help companies access capital to invest and grow. *See* Notice, *supra* note 3, 79 FR at 33983. The Exchange asserts that being included in a successful ETP can provide the stocks of these companies with enhanced liquidity and exposure, enabling them to attract investors and access capital markets to fund investment and growth. *See id.* at 33983, n. 17 and accompanying text. As constructed, any potential benefit to operating companies from the Program could be derived from the company being included within an index or other benchmark that underlies an ETP that participates in the Program.

[95] Transaction costs are generally defined as the penalty that an investor pays for transacting. Transaction costs have four components: commissions; bid/ask spread; market impact; and opportunity cost. *See* Grinold, Kahn. *Active Portfolio Management,* Second Edition, Chapter 16. An increase in bid-ask spreads will inevitably increase the transaction costs of an investor. In addition, transactions in low-liquidity securities have a higher market impact when compared to other more liquid securities. *See* Albert Kyle's (1985) measure of market impact (Kyle's Lambda), defining an inverse relationship between volume and price impact. Therefore, the lower the volume of the ETP or stock, the higher the market impact of any transaction in that stock. This last effect acts as a disincentive to trading that security. Therefore, an environment where an ETP trades more often and with a larger number of shares will reduce transaction costs both through the narrowing of spreads and lower market impact.

[96] The concurrent exemptive relief the Commission is issuing today from Rule 102 under Regulation M concerning the Program also contains additional disclosure requirements. *See* Securities Exchange Act Release No. 72693 (Jul. 28, 2014), *supra* note 4.

[97] However, any CLP Security initially listed on the Exchange will remain eligible for the Program for the first six months that it is listed on the Exchange, regardless of the ETP's CADV.

[98] The same exception applies to the termination provision. *See supra* note 97.

of whether the Program is in fact achieving its goal of improving the market quality of CLP Securities, prior to any proposal or determination to make the Program permanent.[99] In addition, approval on a pilot basis will allow the assessment, prior to any proposal or determination to make the Program permanent, of whether the Program has any unintended impact on the CLP Securities, securities not participating in the Program, or the market or market participants generally.

The Exchange has represented that during the pilot it will submit monthly reports to the Commission about market quality in respect of the Program and that these reports will be posted on the Exchange's public Web site. The Exchange has represented that such reports will compare securities before and after they are in the Program, and will include information regarding CLP Security volume metrics, the number of ETP CLPs in CLP Securities, quotation spread and size statistics, and data and analysis about the market quality of CLP Securities that exceed the one million CADV threshold and ''graduate'' from the Program (or, where no securities have ''graduated'' from the Program, securities that have ''graduated'' from comparable programs at other exchanges to the extent that such securities exist). The Exchange also has represented that it will provide to the Commission similar data and analyses about comparable ETPs listed on the Exchange that are not participating in the Program, as well as any other Program-related data and analyses the Commission staff requests from the Exchange for the purpose of evaluating the efficacy of the Program. The Commission expects that this data and analyses provided by the Exchange should help the Commission, the Exchange, and other interested members of the public to evaluate whether the Program has resulted in the intended benefits it is designed to achieve, any unintended consequences resulting from the Program, and the extent to which the Program alleviates or aggravates the concerns the Commission has noted, including previously-stated Commission concerns relating to issuer payments to market makers.[100]

For example, the Exchange and the Commission will look to assess what impact, if any, there is on the market quality of CLP Securities that are withdrawn or are otherwise terminated from the Program. One way for a CLP Security to be terminated from the Program is if it exceeds the 1,000,000 CADV threshold included within the rules. The Commission recognizes that the Program may not, in the one-year pilot period, produce sufficient data (*i.e.,* a large number of CLP Securities that enter and exit the Program) to allow a full assessment of whether termination (or withdrawal) of a CLP Security from the Program has resulted in any unintended consequences on the market quality of the CLP Security or otherwise. However, the Commission believes that the proposal strikes a reasonable balance between (i) setting the threshold for ''graduation'' from the Program high enough to encourage participation in the Program and (ii) setting the threshold low enough to have a sufficient number of CLP Securities graduate from the Program within the pilot period so that the Exchange, the Commission, and other interested persons can assess the impact, if any, of the Program, including ''graduation'' of CLP Securities from the Program. The Commission also notes that if no securities ''graduate'' from the Program during the pilot period, the Exchange has represented that it will provide data and analysis to the Commission relating to securities that have ''graduated'' from comparable programs at other exchanges to the extent that such securities exist.

Furthermore, the pilot structure of the Program has the potential to generate data that is useful in evaluating the transition of ETPs from the existing CLP Program to the Program. The validity of inference and conclusions from statistical analysis of the pilot data may be limited by the pilot's small scale, however.

The Commission believes that the design of the Program and the public disclosure requirements, coupled with implementation of the proposal on a pilot basis, should help mitigate potential concerns the Commission has noted above relating to any unintended or negative effects of the Program on the ETP market and investors.

The Commission has previously expressed concerns relating to payments by issuers to market makers. FINRA Rule 5250 (formerly NASD Rule 2460) prohibits FINRA members and their associated persons from directly or indirectly accepting any payment from an issuer for acting as a market maker.[101] FINRA Rule 5250 was implemented, in part, to address concerns about issuers paying market makers, directly or indirectly, to improperly influence the price of an issuer's stock and because of conflict of interest concerns between issuers and market makers.[102] FINRA Rule 5250 was designed to preserve ''the integrity of the marketplace by ensuring that quotations accurately reflect a broker-dealer's interest in buying or selling a security.'' [103] Specifically, in the NASD Rule 2460 Approval Order, the Commission found that the

> decision by a firm to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the firm's expectations toward the market, its current inventory position, and exposure to risk and competition. This decision should not be influenced by payments to the member from issuers or promoters. Public investors expect broker-dealers' quotations to be based on the factors described above. If payments to broker-dealers by promoters and issuers were permitted, investors would not be able to ascertain which quotations in the marketplace are based on actual interest and which quotations are supported by issuers or promoters. This structure would harm investor confidence in the overall integrity of the marketplace.[104]

The Commission also added that ''such payments may be viewed as a conflict of interest since they may influence the member's decision as to whether to quote or make a market in a security and, thereafter, the prices that the member would quote.'' [105]

The Commission believes that a number of aspects of the Program mitigate the concerns that FINRA Rule 5250 was designed to address. First, the Commission believes that the terms of the Program are generally objective, clear, and transparent. The standards for the Program are set forth in proposed Interpretation and Policy .03 to Rule 11.8. (further described above) [106] and set forth the application and withdrawal process, the CLP Company eligibility

[99] The Exchange would be required to file with the Commission any proposal to extend the Program beyond the pilot period or to make the Program permanent pursuant to Section 19(b) of the Exchange Act and the rules and regulations thereunder. Such a filing would be published for comment in the **Federal Register** pursuant to Section 19(b) and Rule 19b–4.

[100] *See infra* notes 102–105 and accompanying text.

[101] FINRA has amended Rule 5250 to create an exception for payments to members that are expressly provided for under the rules of a national securities exchange that are effective after being filed with, or filed with and approved by, the Commission pursuant to the requirements of the Act. *See* Securities Exchange Act Release No. 69398 (Apr. 18, 2013), 78 FR 24261 (Apr. 24, 2013). This amendment to FINRA Rule 5250 became effective May 15, 2013.

[102] *See* Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (SR–NASD–97–29) (''NASD Rule 2460 Approval Order''), at 37107.

[103] *See id.* at 37107.

[104] *See id.*

[105] *See id.* at 37106.

[106] *See supra* Section I.

requirements, the ETP CLP qualification requirements, the fee and rebate structure, the market quality standards that an ETP CLP must meet and maintain to secure a portion of the daily CLP Rebate and maintain eligibility as an ETP CLP, the termination process, and the disclosure requirements. These requirements apply to all CLP Securities, CLP Companies, and ETP CLPs participating in the Program.

Second, the Exchange also will provide notification on its public Web site regarding the various aspects of the Program. As discussed above, this disclosure will include: (i) The CLP Securities and associated CLP Companies participating in the Program and the ETP CLPs assigned to each CLP Security; (ii) the date a particular CLP Company, on behalf of a CLP Security, begins participating or ceases participating in the Program; (iii) the acceptance of a CLP Company, on behalf of a CLP Security, and an ETP CLP into the Program; (iv) the intent of a CLP Company, on behalf of a CLP Security, or ETP CLP to withdraw from the Program, and the date of actual withdrawal or termination from the ETP CLP Program; (v) the total number of CLP Securities that any one CLP Company may have in the ETP CLP Program; (vi) the amount of the supplemental CLP Fee, if any, for each CLP Security; and (vii) a description of the Program, including a fair and balanced summation of the potentially positive aspects of the Program, as well as the potentially negative aspects and risks of the Program.

In addition, a CLP Company will be required to: (i) Disclose on a product-specific Web site for each CLP Security that the CLP Security is participating in the Program and provide on its Web site a hyperlink to the Exchange's Web page describing the Program; and (ii) issue a press release when the CLP Company, on behalf of a CLP security, commences or ceases participation in the Program and post such press release on its Web site (or if it does not have a Web site, on the Web site of the Sponsor of the CLP Security).

And third, CLP Securities will be traded on the Exchange, which is a regulated market, pursuant to the current trading and reporting rules of the Exchange, and pursuant to the Exchange's established market surveillance and trade monitoring procedures. The Exchange will administer the application and acceptance of the CLP Companies and ETP CLPs into the Program, as well as the continuation in and withdrawal from the Program. The Exchange will collect the CLP Fees from CLP Companies and/or Sponsors and credit them to the Exchange's General Fund. An ETP CLP will be eligible to receive a CLP Rebate from the Exchange's General Fund only after it meets the proposed ETP CLP quoting requirements, as determined by the Exchange. Furthermore, the CLP Fees will be paid into the Exchange's General Fund, and the CLP Rebates will be paid out of the Exchange's General Fund. If no ETP CLP is eligible for the bid or offer portion of the CLP Rebate for a particular CLP Security on a particular day, no CLP Rebate will be awarded to any ETP CLP on that day and no refund will be provided to the applicable CLP Company or its Sponsor. The Commission believes that these factors, taken together, should help to mitigate the conflict of interest and other concerns that the Commission has previously identified [107] relating to issuers paying for market making.

The Commission believes that it is reasonable and consistent with the Act for the Exchange to limit the Program to certain types of securities to allow the Exchange, through a pilot, to assess whether the Program will have the desired effect of improving the market quality of these securities before implementing the Program on a permanent basis. The Commission believes that it is reasonable and consistent with the Act for the Exchange to limit the Program to products under the 1,000,000 CADV threshold, to support the Exchange's stated purpose to ''encourage narrow spreads and liquid markets in securities that generally have not been, or may not be, conducive to naturally having such narrow spreads and liquidity.'' [108]

The Commission believes that the CLP Fees are an equitable allocation of reasonable fees. First, participation in the Program is voluntary. An entity is free to determine whether it would be economically desirable to pay the CLP Fee, given the amount of the fee, the trading characteristics of the ETP, and the anticipated benefit. If a CLP Company chooses to participate in the Program on behalf of a CLP Security, it will incur the basic CLP Fee of $10,000, and the CLP Company will have discretion to incur the supplemental CLP Fee in an amount up to an additional $90,000. The CLP Fee will be paid for by the CLP Company that has a CLP Security participating in the Program or, for a CLP Security housed by a CLP Company that has a Sponsor, by the Sponsor associated with such CLP Company. Thus, the CLP Fee will be incurred and paid for by an entity that has chosen to participate in, and that may potentially benefit from, the Program.[109] An entity that chooses not to participate will not be required to pay any additional fee beyond the standard listing and annual fees. Further, the basic CLP Fee will be the same for any CLP Company wishing to participate in the Program.

The Commission also believes that availability of the discretionary supplemental CLP Fee is consistent with the Act. Each CLP Company participating in the Program will have the choice of whether or not to incur, as well as the exact amount (up to $90,000) of, the supplemental CLP Fee. Not all ETPs are alike, and trading in certain products may be riskier or more costly than trading in others. The Commission believes that it is reasonable to allow each CLP Company to choose to participate in the Program and to determine whether (and if so, at what amount) it is desirable to incentivize ETP CLPs through the supplemental CLP Fee to improve the market quality of certain CLP Securities. Finally, as discussed above, the payment of the supplemental CLP Fee will be transparent to the marketplace, as this information will be disclosed on the Exchange's Web site.

Section 11(d)(1) of the Exchange Act

Section 11(d)(1) of the Exchange Act [110] generally prohibits a broker-dealer from extending or maintaining

[107] *See* NASD Rule 2460 Approval Order, *supra* note 102, and *supra* notes 102–105. *See also* Securities Act Release No. 6334 (Aug. 6, 1981), 46 FR 42001 (Aug. 18, 1981), at Section IV.B (Treatment as Statutory Underwriter).

[108] *See* Notice, *supra* note 3, 79 FR at 33983.

[109] Issuers of exchange-traded funds registered under the Investment Company Act of 1940 (''1940 Act'') are prohibited from paying directly or indirectly for distribution of their shares (*i.e.,* directly or indirectly financing any activity that is primarily intended to result in the sale of shares), unless such payments are made pursuant to a plan that meets the requirements of Rule 12b–1 under the 1940 Act. Although the services at issue could be primarily intended to result in the sale of fund shares, the Commission has stated that such a determination will depend on the surrounding circumstances. *See Payment of Asset-Based Sales Loads by Registered Open-End Management Investment Companies,* Investment Company Act Release No. 16431 (June 13, 1988) (''1988 12b–1 Release''). As the Commission has noted previously, if a fund makes payments that are ostensibly for a non-distribution purpose, and the recipient of those payments finances distribution, the question arises whether the fund's assets are being used indirectly for distribution. The Commission has stated that there can be no precise definition of what types of expenditures constitute indirect use of fund assets, and this determination is based on the facts and circumstances of each individual case. In addition, fund directors, particularly independent directors bear substantial responsibility for making that judgment. *See Bearing of Distribution Expenses by Mutual Funds,* Investment Company Act Release No. 11414 (October 28, 1980).

[110] 15 U.S.C. 78k(d)(1).

credit, or arranging for the extension or maintenance of credit, on shares of new issue securities, if the broker-dealer participated in the distribution of the new issue securities within the preceding 30 days. The Commission's view is that shares of open-end investment companies and unit investment trusts registered under the 1940 Act, such as ETP shares, are distributed in a continuous manner, and broker-dealers that sell such securities are therefore participating in the ''distribution'' of a new issue for purposes of Section 11(d)(1).[111]

The Division of Trading and Markets, acting under delegated authority, granted an exemption from Section 11(d)(1) and Rule 11d1–2 thereunder for broker-dealers that have entered into an agreement with an exchange-traded fund's distributor to place orders with the distributor to purchase or redeem the exchange-traded fund's shares (''Broker-Dealer APs).[112] The SIA Exemption allows a Broker-Dealer AP to extend or maintain credit, or arrange for the extension or maintenance of credit, to or for customers on the shares of qualifying exchange-traded funds subject to the condition that neither the Broker-Dealer AP, nor any natural person associated with the Broker-Dealer AP, directly or indirectly (including through any affiliate of the Broker-Dealer AP), receives from the fund complex any payment, compensation, or other economic incentive to promote or sell the shares of the exchange-traded fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C). This condition is intended to eliminate special incentives that Broker-Dealer APs and their associated persons might otherwise have to ''push'' exchange-traded fund shares.[113]

The Program will permit certain ETPs to voluntarily incur increased listing fees payable to the Exchange. In turn, the Exchange will use the fees to make CLP Rebates to market makers that improve the liquidity of participating issuers' securities, and thus enhance the market quality for the participating issuers. CLP Rebates will be accrued for, among other things, maintaining continuous, two-sided displayed quotes or orders. Receipt of the CLP Rebates by certain broker-dealers will implicate the conditions of the SIA Exemption [114] from the new issue lending restriction in Section 11(d)(1) of the Exchange Act discussed above. The Commission's view is that the CLP Rebates market makers will receive under the proposal are indirect payments from the fund complex to the market maker and that those payments are compensation to promote the shares of the ETP. Therefore, a market maker that is also a broker-dealer receiving the incentives will not be able to rely on the SIA Exemption from Section 11(d)(1).[115] This does not mean that broker-dealers cannot participate in the Program; it merely means they cannot rely on the SIA Exemption [116] while doing so. Thus, broker-dealers that participate in the Program will need to comply with Section 11(d)(1) unless there is another applicable exemption.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[117] that the proposed rule change (SR–BATS–2014–022), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[118]

Kevin M. O'Neill,

Deputy Secretary.

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[111] *See, e.g.,* Exchange Act Release Nos. 6726 (Feb. 8, 1962), 27 FR 1415 (Feb. 15, 1962) and 21577 (Dec. 18, 1984), 49 FR 50174 (Dec. 27, 1984).

[112] *See* Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission to Securities Industry Association (Nov. 21, 2005) (''SIA Exemption'').

[113] Trading and markets staff provided no-action relief from Section 11(d)(1) for broker-dealers engaging in secondary market proprietary or customer transactions in securities of Commodity-based Exchange-Traded Trusts (''CBETTs'') similar to the Commission's SIA Exemption. This relief is conditioned on the broker-dealer and any natural person associated with the broker-dealer not receiving from the Fund complex, directly or indirectly, any payment, compensation or other economic incentive to promote or sell Shares to persons outside of the Fund complex, other than non-cash compensation permitted under NASD Rule 2830(1)(5)(A), (B), or (C). *See* No-Action Letter re: DB Commodity Index Tracking Fund and DB Commodity Services LLC (Jan. 19, 2006); No-Action Letter re: Rydex Specialized Products LLC (Dec. 5, 2005); No-Action Letter re: streetTRACKS Gold Trust (Dec. 12, 2005); and No-Action Letter re: iShares COMEX Gold Trust (Dec. 12, 2005).

[114] *See also* note 113, *supra.*

[115] *Id.*

[116] *Id.*

[117] 15 U.S.C. 78s(b)(2).

[118] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72689; File No. SR–EDGA–2014–16]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change To Establish a New Market Data Product Called the BATS One Feed

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a new market data product called the BATS One Feed as well as to establish related market data fees. The text of the proposed BATS One Feed is attached as Exhibit 5A. The proposed changes to the fee schedule are attached as Exhibit 5B. Exhibits 5A and 5B are available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a new market data product called the BATS One Feed. As described more fully below, the BATS One Feed is a data feed that will disseminate, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGA and its affiliated exchanges [3] (collectively, the ''BATS Exchanges'') and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[4] The BATS One Feed will also contain the individual last sale information for EDGA and each of its affiliated exchanges. In addition, the BATS One Feed will contain optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels.

The BATS One Feed is designed to meet the needs of prospective Members that do not need or are unwilling to pay for the individual book feeds offered by each of the individual BATS Exchanges. In addition, the BATS One Feed offers market data vendors and purchasers a suitable alternative to the use of consolidated data where consolidated data are not required to be purchased or displayed. Finally, the proposed new data feed provides investors with new options for receiving market data and competes with similar market data products offered by NYSE Technologies, an affiliate of the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[5]

The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[6]

Description of the BATS One Feed

The BATS One Feed will contain the aggregate BBO of the BATS Exchanges for all securities that are traded on the BATS Exchanges and for which the BATS Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The aggregate BBO would include the total size of all orders at the BBO available on all BATS Exchanges.[7] The BATS One Feed would also disseminate last sale information for each of the individual BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). The last sale information will include the price, size, time of execution, and individual BATS Exchange on which the trade was executed. The last sale message will also include the cumulative number of shares executed on all BATS Exchanges for that trading day. The Exchange will disseminate the aggregate BBO of the BATS Exchanges and last sale information through the BATS One Feed no earlier than each individual BATS Exchange provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The BATS One Feed would also consist of Symbol Summary, Market Status, Retail Liquidity Identifier on behalf of BYX, Trading Status, and Trade Break messages. The Symbol Summary message will include the total executed volume across all BATS Exchanges. The Market Status message is disseminated to reflect a change in the status of one of the BATS Exchanges. For example, the Market Status message will indicate whether one of the BATS Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the BATS One Feed as part of the aggregated BBO. The Market Status message will also indicate where BATS Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

The Retail Liquidity Identifier indicator message will be disseminated via the BATS One Feed on behalf of BYX only pursuant to BYX's Retail Price Improvement (''RPI'') Program.[8] The Retail Liquidity Identifier indicates when RPI interest priced at least $0.001 better than BYX's Protected Bid or Protected Offer for a particular security is available in the System. The Exchange proposes to disseminate the Retail Liquidity Indicator via the BATS One Feed in the same manner as it is currently disseminated through consolidated data streams (*i.e.,* pursuant to the Consolidated Tape Association Plan/Consolidated Quotation Plan, or CTA/CQ, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through proprietary BYX data feeds. The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest. In particular, like CQ and UTP quoting outputs, the BATS One Feed will include a field for codes related to the Retail Price Improvement Identifier. The codes indicate RPI interest that is priced better than BYX's Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the Program.

The Trade Break message will indicate when an execution on a BATS Exchange is broken in accordance with the individual BATS Exchange's rules.[9] The Trading Status message will indicate the current trading status of a security on each individual BATS Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO

[3] EDGA's affiliated exchanges are EDGX Exchange, Inc. (''EDGX''), BATS Exchange, Inc. (''BATS''), and BATS Y-Exchange, Inc. (''BYX''). On January 31, 2014, Direct Edge Holdings LLC (''DE Holdings''), the former parent company of the Exchange and EDGA, completed its business combination with BATS Global Markets, Inc., the parent company of BATS and BYX. *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGA–2013–34). Upon completion of the business combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.''

[4] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement the BATS One Feed and its related fees.

[5] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); NYSE Technologies Best Book and Trade (''BQT''), *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[7] The Exchange notes that quotations of odd lot size, which is generally less than 100 shares, are included in the total size of all orders at a particular price level in the BATS One Feed but are currently not reported by the BATS Exchanges to the consolidated tape.

[8] For a description of BYX's RPI Program, *see* BYX Rule 11.24. *See also* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2, to Adopt a Retail Price Improvement Program); Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (August 31, 2012) (SR–BYX–2019–019) (Notice of Filing of Proposed Rule Change to Adopt a Retail Price Improvement Program).

[9] *See, e.g., Exchange [sic] and EDGA Rule 11.13, Clearly Erroneous Executions, and BATS and BYX Rule 11.17, Clearly Erroneous Executions.*

(''Short Sale Circuit Breaker''),[10] or the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

Optional Aggregate Depth of Book. The BATS One Feed will also contain optional functionality which will enable recipients to receive two-sided quotations from the BATS Exchanges for five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (''BATS One Premium Feed''). For each price level on one of the BATS Exchanges, the BATS One Premium Feed option of the BATS One Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.[11]

BATS One Feed Fees

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees; [12] (ii) Usage Fees for both Professional and Non-Professional Users; [13] and (iii) Enterprise Fees.[14] The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distribution Fees.

Definitions. The Exchange also proposes to include in its fee schedule the following defined terms that relate to the BATS One Feed fees.

- ''Distributor'' will be defined as ''any entity that receives the BATS One Feed directly from EDGA or indirectly through another entity and then distributes it internally or externally to a third party.'' [15]
- ''Internal Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users within the Distributor's own entity.'' [16]
- ''External Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users outside the Distributor's own entity.'' [17]
- ''User'' will be defined as a ''natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.''
- ''Non-Professional User'' will be defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.'' [18]
- ''Professional User'' will be defined as ''any User other than a Non-Professional User.'' [19]

Internal Distribution Fees. Each Internal Distributor that receives only the BATS One Summary Feed shall pay an Internal Distributor Fee of $10,000.00 per month. Each Internal Distributor shall pay an Internal Distributor Fee of $15,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange will charge no usage fees for BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

External Distribution Fees. The Exchange proposes to charge those firms that distribute the BATS One Feed externally an External Distributor Fee of $2,500.00 per month for the BATS One Summary Feed. Each External Distributor shall pay an External Distributor Fee of $5,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.

In addition to Internal and External Distribution Fees, the Exchange also proposes to charge recipient firms who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $10.00 per user for receipt of the BATS One Summary Feed or $15.00 per user who elects to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user where they elects to also receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.[20] Distributors must report all Professional and Non-Professional Users in accordance with the following:

[10] 17 CFR 242.200(g); 17 CFR 242.201.

[11] Recipients who do not elect to receive the BATS One Premium Feed will receive the aggregate BBO of the BATS Exchanges under the BATS Summary Feed, which, unlike the BATS Premium Feed, would not delineate the size available at the BBO on each individual BATS Exchange.

[12] The Exchange notes that distribution fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 7019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[13] The Exchange notes that usage fees as well as the distinctions based on professional and non-professional subscribers have been previously filed with or approved by the Commission by Nasdaq and the NYSE. *See* Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102).

[14] The Exchange notes that enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. *See* Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR–NYSE–2013–58); 70010 (July 19, 2013) (File No. SR–CTA/CQ–2013–04).

[15] The proposed definition of ''Distributor'' is similar to Nasdaq Rule 7047(d)(1).

[16] The proposed definition of ''Internal Distributor'' is similar to Nasdaq Rule 7047(d)(1)(A).

[17] The proposed definition of ''External Distributor'' is similar to Nasdaq Rule 7047(d)(1)(B).

[18] The proposed definition of ''Professional User'' is similar to Nasdaq Rule 7047(d)(3)(A).

[19] The proposed definition of ''Non-Professional User'' is similar to Nasdaq Rule 7047(d)(3)(B).

[20] Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms whose Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

• In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

• The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

• External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

• If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a $5,000.00 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling $5,000.00 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $4,000.00 of monthly usage, it will pay a net of $1,000 for the Distributor Fee.

Enterprise Fee. The Exchange also proposes to establish a $50,000.00 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an external distributor to receive the data for an unlimited number of Professional and Non-Professional Users and $100,000.00 per month for recipient firms who elect to also receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Subscribers who each receive the BATS One Summary Feed portion of the BATS One Feed at $10.00 per month, then that recipient firm will pay $150,000.00 per month in Professional Subscriber fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $50,000.00 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such Subscriber to be covered by an Enterprise Fee rather than by per-Subscriber fees. A Subscriber that pays the Enterprise Fee will not have to report the number of such Subscribers on a monthly basis. However, every six months, a Subscriber must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trading Notice to be published as soon as practicable following approval of the proposed rule change by the Commission. The Exchange anticipates making available the BATS One Feed for evaluation as soon as practicable after approval of the proposed rule change by the Commission.

2. Statutory Basis

The BATS One Feed

The Exchange believes that the proposed BATS One Feed is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the BATS One Feed. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time last sale information and best-bid-and-offer information contained in the BATS One Feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[23] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[24] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[25]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1.

[24] *See* 17 CFR 242.603.

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. The BATS One Feed is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

BATS One Feed Fees

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,[26] in general, and Section 6(b)(4) of the Act,[27] in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Exchange also notes that products described herein are entirely optional. Firms are not required to purchase the BATS One Feed. Firms have a wide variety of alternative market data products from which to choose. Moreover, the Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers. The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of market forces to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' [28]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [29]

The 2010 Dodd-Frank amendments to the Exchange Act reinforce the court's conclusions about congressional intent. On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.'' The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act. As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[30] In addition, the existence of alternatives to these data products, such as proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in their greater availability to Professional and Non-Professional Users. Moreover, introducing a Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data and provides the same data that is available to Professional Users.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of $26 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $100,000 per month for distribution to an unlimited number of non-professional users or $365,000 per month for up to 16,000 professional users, plus $2 for each additional professional user over 16,000.[31] The Exchange notes that Nasdaq Basic also offers data for Nasdaq OMX BX and Nasdaq OMX PSX, as described below.

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4).

[28] *Id.* at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

[29] *Id.*

[30] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[31] *See* Nasdaq Rule 7047.

The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT, for a monthly fee of $18 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. EDGA's proposed per-user fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of $20–$50 per device, depending on the number of professional subscribers, and $1.00 per non-professional subscriber, depending on the number of non-professional subscribers.[32] A monthly enterprise fee of $686,400 is available under which a U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its nonprofessional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

Enterprise Fee. The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per user structure and benefit from the per user fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users that select these products. The fee structure of differentiated professional and non-professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[33] Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.[34] The Exchange believes that the Distribution Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distribution fee is higher than those of competitor products, there are no usage fees assessed for Users that receive the BATS One Feed data through Internal Distribution, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer. In addition, for External Distribution, the Distribution Fees are similar to or lower than similar products. For example, under the Nasdaq UTP and CTA and CQ Plans, consolidated last sale and bid-ask data are offered for a combined monthly fee of $3,000 for redistribution.[35] The Exchange is proposing Distribution Fees that are less than the fees currently charged by the Nasdaq UTP and CTA and CQ Plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. An exchange's ability to price its proprietary data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary last sale data. Because other exchanges already offer similar products,[36] the Exchange's proposed BATS One Feed will enhance competition. Specifically, the BATS One Feed was developed to compete with similar market data products offered by Nasdaq and NYSE Technologies, an affiliate of the NYSE.[37] The BATS One Feed will foster competition by providing an alternative market data product to those offered by Nasdaq and the NYSE for less cost, as described in more detail in Section 3(b) above. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[38]

The proposed BATS One Feed would enhance competition by offering a market data product that is designed to compete directly with similar products offered by the NYSE and Nasdaq. Nasdaq Basic is a product that includes two feeds, QBBO, which provides BBO information for all U.S. exchange-listed securities on Nasdaq and NLS Plus, which provides last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq

[32] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA*.

[33] *See, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); NASDAQ Rules 7023(b), 7047.

[34] The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[35] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA,* Nasdaq UTP fees available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListUTP#uf*.

[36] *See supra* note 5.

[37] *Id.*

[38] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

TRF,[39] Nasdaq OMX BX, and Nasdaq OMX PSX.[40] Likewise, NYSE BQT includes BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT.[41] As a result, Nasdaq Basic and NYSE BQT comprise a significant view of the market on any given day and both include data from multiple trading venues. As the BATS Exchanges are consistently one of the top exchange operators by market share for U.S. equities trading, excluding opening and closing auction volume, the data included within the BATS One Feed will provide investors with an alternative to Nasdaq Basic and NYSE BQT and a new option for obtaining a broad market view, consistent with the primary goal of the market data amendments adopted by Regulation NMS.[42]

The BATS One Feed will not only provide content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. As previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is 60% less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

As the Exchange considers the integration of the BATS One Feed into External Distributor products an important ingredient to the product's success, the Exchange has designed pricing that enables External Distributors to spend three months integrating BATS One Feed data into their products and to enlist new Users to receive the BATS One Feed data for free with no External Distribution charges. In addition, the Exchange is providing External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fees up to the amount of the External Distribution Fee, which could result in the External Distributor paying a discounted or no External Distribution Fee once the free three months period has ended. With the fee incentives in place, External Distributors may freely choose to include the BATS One Feed data into their product thereby increasing competition with External Distributors offering similar products, replace alternative data provided by Nasdaq Basic or NYSE BQT with the BATS One Feed data or enhance their product to include BATS One Feed data along with data offered by competitors to create a distributor product that may be more valuable than the BATS One Feed or any competitor product alone. As with any product, the recipients of the data will determine the value of the data provided by the exchange directly or through an External Distributor. Potential subscribers may opt to disfavor the BATS One Feed based on the content provided or the pricing and may believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed BATS One Feed will impair the ability of External Distributors or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes the BATS One Feed will further enhance competition by providing External Distributors with a data feed that allows them to more quickly and efficiently integrate into their existing products. Today, Distributors subscribe to various market data products offered by single exchanges and resell that data, either separately or in the aggregate, to their subscribers as part of the their own market data offerings. Distributors may incur administrative costs when consolidating and augmenting the data to meet their subscriber's need. Consequently, many External Distributors will simply choose to not take the data because of the effort and cost required to aggregate data from separate feeds into their existing products. Those same Distributors have expressed interest in the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges. The Exchange, therefore, believes that by providing market data that encompasses combined data from affiliated exchanges, the Exchange enables certain External Distributors with the ability to compete in the provision of similar content with other External Distributors, where they may not have done so previously if they were required to subscribe to the depth-of-book feeds from each individual BATS Exchange.

Although the Exchange considers the acceptance of the BATS One Feed by External Distributors as important to the success of the product, depending on their needs, External Distributors may choose not to subscribe to the BATS One Feed and may rather receive the BATS Exchange individual market data products and incorporate them into their specific market data products. For example, the BATS Premium Feed provides depth-of-book information for up to five price levels while each of the BATS Exchange's individual data feeds offer complete depth-of-book and are not limited to five price levels.[43] Those subscribers who wish to view the complete depth-of-book from each individual BATS Exchange may prefer to subscribe to one or all of individual BATS Exchange depth-of-book data feeds instead of the BATS One Feed. The BATS One Feed simply provides another option for Distributors to choose from when selecting a product that meets their market data needs. Subscribers who seek a broader market view but do not need complete depth-of-book may select the BATS One Feed while subscribers that seek the complete depth-of-book information may subscribe to the depth-of-book feeds of each individual BATS Exchanges.

Latency. The BATS One Feed is not intended to compete with similar products offered by External Distributors. Rather, it is intended to assist External Distributors in incorporating aggregated and summarized data from the BATS Exchanges into their own market data products that are provided to the end user. Therefore, Distributors will receive the data, who will, in turn, make available BATS One Feed to their end users, either separately or as incorporated into the various market data products they provide. As stated above, Distributors have expressed a desire for a product like the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products

[39] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq TRF).

[40] *See* Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX).

[41] *See* NYSE Technologies BQT, *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[42] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[43] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

without themselves incurring the administrative costs of repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges.

Notwithstanding the above, the Exchange believes that External Distributors may create a product similar to BATS One Feed based on the market data products offered by the individual BATS Exchanges with minimal latency difference. In order to create the BATS One Feed, the Exchange will receive the individual data feeds from each BATS Exchange and, in turn, aggregate and summarize that data to create the BATS One Feed. This is the same process an External Distributor would undergo should it create a market data product similar to the BATS One Feed to distribute to its end users. In addition, the servers of most External Distributors are likely located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each BATS Exchange on or about the same time the Exchange would for it to create the BATS One Feed. Therefore, the Exchange believes that it will not incur any potential latency advantage that will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Existence of Actual Competition. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings and order flow and sales of market data itself, providing virtually limitless opportunities for entrepreneurs who wish to compete in any or all of those areas, including by producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market.

Competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice also has acknowledged the aggressive competition among exchanges, including for the sale of proprietary market data itself. In announcing that the bid for NYSE Euronext by Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. had been abandoned, Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [44]

It is common for broker-dealers to further exploit this recognized competitive constraint by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [45]

In addition, in the case of products that are distributed through market data vendors, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, vendors will not elect to make available the products described herein unless their customers request them, and customers will not elect to purchase them unless they can be used for profit-generating purposes. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[46] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[47]

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[44] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[45] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

[46] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–Nasdaq–2010–110); Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–Nasdaq–2010–111) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger (''because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade execution services are an example of 'joint products' with 'joint costs.' ''), attachment at pg. 4, *available at www.sec.gov/comments/34-57917/3457917-12.pdf.*

[47] *See generally* Mark Hirschey, FUNDAMENTALS OF MANAGERIAL ECONOMICS, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives. As stated above, broker-dealers currently have numerous alternative venues for their order flow, including eleven SRO markets, as well as internalizing BDs and various forms of ATSs, including dark pools and ECNs. Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do so or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, and NYSEArca.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless. The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, and TracECN. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson-Reuters.

Competitive forces constrain the prices that platforms can charge for non-core market information. A trading platform cannot generate market information unless it receives trade orders. For this reason, a platform can be expected to use its market data product as a tool for attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained elsewhere, this does not enable the owner of such information to exercise monopoly power over that information vis-à-vis firms with the need for such information. Even though market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and thus, in the long run,

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produced invariable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' Quarterly Journal of Economics V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

reduces the quality of the information generated by the exchange.

Competition among platforms has driven the Exchange to improve its platform data offerings and to cater to customers' data needs by proposing the BATS One Feed. The vigor of competition for non-core data information is significant and the Exchange believes that this proposal clearly evidences such competition. The Exchange proposes the BATS One Feed and pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges. The explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data information is highly competitive and continually evolves as products develop and change.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, because vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost is not justified by the returns that any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2014–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2014–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of EDGA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2014–16 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18124 Filed 7–31–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72687; File No. SR–BYX–2014–012]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify for Members and Non-Members the Use of Certain Data Feeds for Order Handling and Execution, Order Routing and Regulatory Compliance of BATS Y-Exchange, Inc.

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 15, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify for Members [3] and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. The Exchange has designated this proposal

[48] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[4]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this filing to clarify for Members and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance.

Order Handling and Execution

In order to calculate the national best bid and offer (''NBBO'') in its Matching Engine (the ''ME''), the Exchange uses quotes disseminated by market centers through proprietary data feeds (generally referred to as ''Direct Feeds'') as well as by the Securities Information Processors (''SIP''). The ME uses quotes disseminated from SIP feeds for the Chicago Stock Exchange, Inc. and NYSE MKT LLC. The Exchange notes that the ME receives Direct Feeds from the Exchange's affiliates, BATS Exchange Inc., EDGA Exchange, Inc., and EDGX Exchange, Inc.

In addition to receiving Direct Feeds and SIP feeds, the ME's calculation of the NBBO may be adjusted based on orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange (collectively ''Feedback''). The Exchange does not include its quotes in the calculation of the Exchange's NBBO because the system is designed such that all incoming orders are separately compared to the Exchange's Best Bid or Offer and the Exchange calculated NBBO, which together create a complete view of the NBBO, prior to display, execution, or routing.

Feedback from the receipt of Intermarket Sweep Orders (''ISOs'') with a time-in-force of Day (''Day ISOs'') and feedback from the Exchange's routing broker/dealer, BATS Trading, Inc., (''BATS Trading''), as described below, are used to augment the market data received by Direct Feeds and the SIP feeds. The Exchange's ME will update the NBBO upon receipt of a Day ISO. When a Day ISO is posted on the BATS Book,[5] the ME uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes.[6] The ME will then display and execute non-ISO orders at the same price as the Day ISO.

All Feedback expires as soon as: (i) One (1) second passes; (ii) the Exchange receives new quote information; or (iii) the Exchange receives updated Feedback information. With the exception of Day ISO Feedback, the Exchange only generates Feedback where the order was routed using one of the following routing strategies: Parallel D, Parallel 2D, Parallel T, SLIM, and TRIM (collectively ''Smart Order Routing'').[7]

The Pegged NBBO (''PBBO'') comprises the Exchange's calculation of the NBBO for purposes of determining the price at which a Pegged Order,[8] Mid-Point Peg Order,[9] or Market Maker Peg Order [10] is to be pegged. The PBBO includes the Exchange's quotes from the SIP feeds in the calculation but is otherwise derived using the same Direct Feeds, SIP feeds, and Feedback used for the NBBO calculation.

Order Routing

When the Exchange has a marketable order with instructions from the sender that the order is eligible to be routed, and the ME identifies that there is no matching price available on the Exchange, but there is a matching price represented at another venue that displays protected quotes, then the ME will send the order to the Routing Engine (''RE'') of BATS Trading.

In determining whether to route an order, the RE makes its own calculation of the NBBO using the Direct Feeds, SIP feeds, and Router Feedback, as described below.[11] The RE does not utilize Day ISO Feedback in constructing the NBBO; however, because all orders initially flow through the ME, to the extent Day ISO Feedback has updated the ME's calculation of the NBBO, all orders processed by the RE do take Day ISO Feedback into account. The RE receives Feedback from all Smart Order Routing strategies.

There are three types of Router Feedback that contribute to the Exchange's calculation of the NBBO:

- Immediate Feedback. Where BATS Trading routes an order to a venue with a protected quotation using Smart Order Routing (a ''Feedback Order''), the number of shares available at that venue is immediately decreased by the number of shares routed to the venue at the applicable price level.
- Execution Feedback. Where BATS Trading receives an execution report associated with a Feedback Order that indicates that the order has fully executed with no remaining shares associated with the order, all opposite side quotes on the venue's order book that are priced more aggressively than the price at which the order was executed will be ignored.
- Cancellation Feedback. Where BATS Trading receives an execution report associated with a Feedback Order that indicates that the order has not fully executed (either a partial execution or a cancellation), all opposite side quotes on the venue's order book that are priced equal to or more aggressively than the limit price for the order will be ignored.

All Feedback expires as soon as: (i) One (1) second passes; (ii) the Exchange receives new quote information; or (iii) the Exchange receives updated Feedback information.

Regulatory Compliance

Locked or Crossed Markets. The ME determines whether the display of an

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 1.5(e).

[6] Pursuant to Regulation NMS, a broker-dealer routing a Day ISO is required to simultaneously route one or more additional ISOs, as necessary, to execute against the full displayed size of any protected quote priced equal to or better than the Day ISO. *See also* Question 5.02 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

[7] *See* Exchange Rule 11.13(a)(3). Thus, the Exchange does not generate Feedback from routing options where the User directs the Exchange to route an order to a particular venue, such as Destination Specific Orders and Directed ISOs, as defined in Rules 11.9(c)(12) and 11.9(d)(2), respectively, nor does the Exchange generate Feedback from the DRT routing option defined in Rule 11.13(a)(3)(E), which routes to alternative trading systems.

[8] *See* Exchange Rule 11.9(c)(8).

[9] *See* Exchange Rule 11.9(c)(9).

[10] *See* Exchange Rule 11.9(c)(16).

[11] The Exchange uses the same Direct Feeds and quotes from the SIP feeds in the RE as is described above with respect to the ME.

order would lock or cross the market. At the time an order is entered into the ME, the ME will establish, based upon its calculation of the NBBO from Direct Feeds, SIP feeds and Feedback, whether the order will lock or cross the prevailing NBBO for a security. In the event that the order would produce a locking or crossing condition, the ME will cancel the order, re-price [12] the order, or route the order based on the Member's instructions. Two exceptions to this logic are Day ISOs and declarations of self-help.

Pursuant to Regulation NMS, when an Exchange receives a Day ISO, the sender of the ISO retains the responsibility to comply with applicable rules relating to locked and crossed markets.[13] In such case, the Exchange is obligated only to display a Day ISO order at the Member's price, even if such price would lock or cross the market.[14]

Declarations of self-help occur when the RE detects that an exchange displaying protected quotes is slow, as defined in Regulation NMS, or non-responsive to the Exchange's routed orders. In this circumstance, according to Rule 611(b) of Regulation NMS, the Exchange may display a quotation that may lock or cross the market where the quotation that it may lock or cross is displayed by the market that the Exchange invoked self-help against.[15] The Exchange may also declare self-help where another exchange's SIP quotes are slow or non-responsive resulting in a locked or crossed market. Once the Exchange declares self-help, the ME and RE will ignore the quotes generated from the self-helped market in their calculations of the NBBO for execution and routing determinations in compliance with Regulation NMS. The Exchange will also disable all routing to the self-helped market. The ME and RE will continue to consume the self-helped market center's quotes; however, in order to immediately include the quote in the NBBO calculation and enable routing once self-help is revoked.

Trade-Through Rule. Pursuant to Rule 611 of Regulation NMS, the Exchange shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on trading centers of protected quotations in NMS stocks that do not fall within a valid exception and, if relying on such an exception, that are reasonably designed to ensure compliance with the terms of the exception. The ME will not permit an execution on the Exchange if there are better-priced protected quotations displayed in the market unless the order is an ISO. At the time an order is entered into the ME, the ME uses the view of the NBBO as described above. If the NBBO is priced better than what is resident on the Exchange, the Exchange will not match such order on the BATS Book, and based on the Member's instructions, the ME will cancel the order, re-price the order or route the order.

Regulation SHO. The Exchange cannot execute a Short Sale Order [16] equal to or below the current National Best Bid (''NBB'') when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker'').[17] When a Short Sale Circuit Breaker is in effect, the Exchange utilizes information received from Direct Feeds, SIP feeds, and Feedback, and a view of the BATS Book to assess its compliance with Rule 201 of Regulation SHO. The primary difference between the NBBO used for compliance with Rule 201 of Regulation SHO and other constructions of the NBBO, however, is that the Exchange includes market centers against which it has declared self-help in its view of the NBBO.

Latent or Inaccurate Direct Feeds. Where the Exchange's systems detect problems with one or more Direct Feeds, the Exchange will immediately fail over to the SIP feed to calculate the NBBO for the market center(s) where the applicable Direct Feed is experiencing issues. Problems that lead to immediate failover to the SIP feed may include a significant loss of information (*i.e.,* packet loss) or identifiable latency, among other things. The Exchange can also manually failover to the SIP feed in lieu of Direct Feed data upon identification by a market center of an issue with its Direct Feed(s).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Section 6(b)(5) of the Act [19] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users.

The Exchange believes that its proposal to describe the Exchange's use of data feeds removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity and transparency. The Exchange's proposal will enable investors to better assess the quality of the Exchange's execution and routing services. The proposal does not change the operation of the Exchange or its use of data feeds; rather it describes how, and for what purposes, the Exchange uses the quotes disseminated from data feeds to calculate the NBBO for a security for purposes of Regulation NMS, Regulation SHO and various order types that update based on changes to the applicable NBBO. The Exchange believes the additional transparency into the operation of the Exchange as described in the proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes the proposal would enhance competition because describing the Exchange's use of data feeds enhances transparency and enables investors to better assess the

[12] *See* Rule 11.9(g).

[13] *See* supra note 6.

[14] *See* supra note 6.

[15] *See also* Question 5.03 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

[16] *See* Exchange Rule 11.19.

[17] 17 CFR 242.200(g); 17 CFR 242.201. On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201, pursuant to which, among other things, short sale orders in covered securities generally cannot be executed or displayed by a trading center, such as the Exchange, at a price that is at or below the current NBB when a Short Sale Circuit Breaker is in effect for the covered security. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a ''short exempt'' marking requirement. *See also* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (extending the compliance date for Rules 201 and 200(g) to February 28, 2011). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, *www.sec.gov/divisions/marketreg/rule201faq.htm.*

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2014–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2014–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*.) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2014–012 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72690; File No. SR–BYX–2014–011]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of Proposed Rule Change To Establish a New Market Data Product Called the BATS One Feed

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 18, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a new market data product called the BATS One Feed as well as to establish related market data fees. The text of the proposed BATS One Feed is attached as Exhibit 5A. The proposed changes to the fee schedule are attached as Exhibit 5B. Exhibits 5A and 5B are available on the Exchange's Web site at *www.batstrading.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a new market data product called the BATS One Feed. As described more fully below, the BATS One Feed is a data feed that will disseminate, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on BYX and its affiliated exchanges[3] (collectively,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Exchange's affiliated exchanges are EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), and BATS Exchange, Inc. (''BATS''). On January 23, 2014, BATS Global Markets, Inc. (''BGMI''), the former parent company of the Exchange and BATS, completed its business combination with Direct Edge Holdings LLC, the parent company of EDGA and EDGX. *See* Securities Exchange Act Release No. 71375 (January 23, 2014),

Continued

the ''BATS Exchanges'') and for which the BATS Exchanges report quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[4] The BATS One Feed will also contain the individual last sale information for BYX and each of its affiliated exchanges. In addition, the BATS One Feed will contain optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels.

The BATS One Feed is designed to meet the needs of prospective Members that do not need or are unwilling to pay for the individual book feeds offered by each of the individual BATS Exchanges. In addition, the BATS One Feed offers market data vendors and purchasers a suitable alternative to the use of consolidated data where consolidated data are not required to be purchased or displayed. Finally, the proposed new data feed provides investors with new options for receiving market data and competes with similar market data products offered by NYSE Technologies, an affiliate of the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[5] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[6]

Description of the BATS One Feed

The BATS One Feed will contain the aggregate BBO of the BATS Exchanges for all securities that are traded on the BATS Exchanges and for which the BATS Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The aggregate BBO would include the total size of all orders at the BBO available on all BATS Exchanges.[7] The BATS One Feed would also disseminate last sale information for each of the individual BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). The last sale information will include the price, size, time of execution, and individual BATS Exchange on which the trade was executed. The last sale message will also include the cumulative number of shares executed on all BATS Exchanges for that trading day. The Exchange will disseminate the aggregate BBO of the BATS Exchanges and last sale information through the BATS One Feed no earlier than each individual BATS Exchange provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The BATS One Feed would also consist of Symbol Summary, Market Status, Retail Liquidity Identifier on behalf of BYX, Trading Status, and Trade Break messages. The Symbol Summary message will include the total executed volume across all BATS Exchanges. The Market Status message is disseminated to reflect a change in the status of one of the BATS Exchanges. For example, the Market Status message will indicate whether one of the BATS Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the BATS One Feed as part of the aggregated BBO. The Market Status message will also indicate where BATS Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

The Retail Liquidity Identifier indicator message will be disseminated via the BATS One Feed on behalf of the Exchange pursuant to BYX's Retail Price Improvement (''RPI'') Program.[8] The Retail Liquidity Identifier indicates when RPI interest priced at least $0.001 better than BYX's Protected Bid or Protected Offer for a particular security is available in the System. The Exchange proposes to disseminate the Retail Liquidity Indicator via the BATS One Feed in the same manner as it is currently disseminated through consolidated data streams (*i.e.,* pursuant to the Consolidated Tape Association Plan/Consolidated Quotation Plan, or CTA/CQ, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through proprietary BYX data feeds. The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest. In particular, like CQ and UTP quoting outputs, the BATS One Feed will include a field for codes related to the Retail Price Improvement Identifier. The codes indicate RPI interest that is priced better than BYX's Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the Program.

The Trade Break message will indicate when an execution on a BATS Exchange is broken in accordance with the individual BATS Exchange's rules.[9] The Trading Status message will indicate the current trading status of a security on each individual BATS Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker''),[10] or the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

Optional Aggregate Depth of Book. The BATS One Feed will also contain optional functionality which will enable recipients to receive two-sided quotations from the BATS Exchanges for five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (''BATS One Premium Feed''). For each price level on one of the BATS Exchanges, the BATS One Premium Feed option of the BATS One Feed will include a two-sided quote and the

79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039). Upon completion of the business combination, DE Holdings and BGMI each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.'' and BGMI changed its name to ''BATS Global Markets Holdings, Inc.''

[4] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement the BATS One Feed and its related fees.

[5] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); NYSE Technologies Best Book and Trade (''BQT''), *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[7] The Exchange notes that quotations of odd lot size, which is generally less than 100 shares, are included in the total size of all orders at a particular price level in the BATS One Feed but are currently not reported by the BATS Exchanges to the consolidated tape.

[8] For a description of BYX's RPI Program, *see* BYX Rule 11.24. *See also* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2, to Adopt a Retail Price Improvement Program); Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (August 31, 2012) (SR–BYX–2019–019) (Notice of Filing of Proposed Rule Change to Adopt a Retail Price Improvement Program).

[9] *See, e.g.,* Exchange [sic] and EDGA Rule 11.13, Clearly Erroneous Executions, and BATS and BYX Rule 11.17, Clearly Erroneous Executions.

[10] 17 CFR 242.200(g); 17 CFR 242.201.

number of shares available to buy and sell at that particular price level.[11]

BATS One Feed Fees

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees; [12] (ii) Usage Fees for both Professional and Non-Professional Users; [13] and (iii) Enterprise Fees.[14] The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distribution Fees.

Definitions. The Exchange also proposes to include in its fee schedule the following defined terms that relate to the BATS One Feed fees.

• ''Distributor'' will be defined as ''any entity that receives the BATS One Feed directly from BYX or indirectly through another entity and then distributes it internally or externally to a third party.'' [15]

• ''Internal Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users within the Distributor's own entity.'' [16]

• ''External Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users outside the Distributor's own entity.'' [17]

• ''User'' will be defined as a ''natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.''

• ''Non-Professional User'' will be defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.'' [18]

• ''Professional User'' will be defined as ''any User other than a Non-Professional User.'' [19]

Internal Distribution Fees. Each Internal Distributor that receives only the BATS One Summary Feed shall pay an Internal Distributor Fee of $10,000.00 per month. Each Internal Distributor shall pay an Internal Distributor Fee of $15,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange will charge no usage fees for BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

External Distribution Fees. The Exchange proposes to charge those firms that distribute the BATS One Feed externally an External Distributor Fee of $2,500.00 per month for the BATS One Summary Feed. Each External Distributor shall pay an External Distributor Fee of $5,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.

In addition to Internal and External Distribution Fees, the Exchange also proposes to charge recipient firms who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $10.00 per user for receipt of the BATS One Summary Feed or $15.00 per user who elects to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user where they elects to also receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.[20] Distributors must report all Professional and Non-Professional Users in accordance with the following:

• In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

• The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor

[11] Recipients who do not elect to receive the BATS One Premium Feed will receive the aggregate BBO of the BATS Exchanges under the BATS Summary Feed, which, unlike the BATS Premium Feed, would not delineate the size available at the BBO on each individual BATS Exchange.

[12] The Exchange notes that distribution fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 7019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[13] The Exchange notes that usage fees as well as the distinctions based on professional and non-professional subscribers have been previously filed with or approved by the Commission by Nasdaq and the NYSE. *See* Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102).

[14] The Exchange notes that enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. *See* Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR–NYSE–2013–58); 70010 (July 19, 2013) (File No. SR–CTA/CQ–2013–04).

[15] The proposed definition of ''Distributor'' is similar to Nasdaq Rule 7047(d)(1).

[16] The proposed definition of ''Internal Distributor'' is similar to Nasdaq Rule 7047(d)(1)(A).

[17] The proposed definition of ''External Distributor'' is similar to Nasdaq Rule 7047(d)(1)(B).

[18] The proposed definition of ''Professional User'' is similar to Nasdaq Rule 7047(d)(3)(A).

[19] The proposed definition of ''Non-Professional User'' is similar to Nasdaq Rule 7047(d)(3)(B).

[20] Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms whose Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

should report all of those methods as an individual User.

• External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

• If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a $5,000.00 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling $5,000.00 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $4,000.00 of monthly usage, it will pay a net of $1,000 for the Distributor Fee.

Enterprise Fee. The Exchange also proposes to establish a $50,000.00 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an external distributor to receive the data for an unlimited number of Professional and Non-Professional Users and $100,000.00 per month for recipient firms who elect to also receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Subscribers who each receive the BATS One Summary Feed portion of the BATS One Feed at $10.00 per month, then that recipient firm will pay $150,000.00 per month in Professional Subscriber fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $50,000.00 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such Subscriber to be covered by an Enterprise Fee rather than by per-Subscriber fees. A Subscriber that pays the Enterprise Fee will not have to report the number of such Subscribers on a monthly basis. However, every six months, a Subscriber must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trading Notice to be published as soon as practicable following approval of the proposed rule change by the Commission. The Exchange anticipates making available the BATS One Feed for evaluation as soon as practicable after approval of the proposed rule change by the Commission.

2. Statutory Basis

The BATS One Feed

The Exchange believes that the proposed BATS One Feed is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the BATS One Feed. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time last sale information and best-bid-and-offer information contained in the BATS One Feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [23] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[24] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[25]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. The BATS One Feed is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1.

[24] *See* 17 CFR 242.603.

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

BATS One Feed Fees

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,[26] in general, and Section 6(b)(4) of the Act,[27] in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among users and recipients of the data and are not designed to permit unfair discrimination among customers, brokers, or dealers. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Exchange also notes that products described herein are entirely optional. Firms are not required to purchase the BATS One Feed. Firms have a wide variety of alternative market data products from which to choose. Moreover, the Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers. The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v.*SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of market forces to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' [28]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [29]

The 2010 Dodd-Frank amendments to the Exchange Act reinforce the court's conclusions about congressional intent. On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.'' The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act. As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[30] In addition, the existence of alternatives to these data products, such as proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in their greater availability to Professional and Non-Professional Users. Moreover, introducing a Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data and provides the same data that is available to Professional Users.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of $26 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $100,000 per month for distribution to an unlimited number of non-professional users or $365,000 per month for up to 16,000 professional users, plus $2 for each additional professional user over 16,000.[31] The Exchange notes that Nasdaq Basic also offers data for Nasdaq OMX BX and Nasdaq OMX PSX, as described below. The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT, for a monthly fee of $18 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. BYX's proposed per-user fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of $20-$50 per device,

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4).

[28] *Id.* at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

[29] *Id.*

[30] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[31] *See* Nasdaq Rule 7047.

depending on the number of professional subscribers, and $1.00 per non-professional subscriber, depending on the number of non-professional subscribers.[32] A monthly enterprise fee of $686,400 is available under which a U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its nonprofessional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

Enterprise Fee. The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per user structure and benefit from the per user fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users that select these products. The fee structure of differentiated professional and non-professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[33] Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.[34] The Exchange believes that the Distribution Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distribution fee is higher than those of competitor products, there are no usage fees assessed for Users that receive the BATS One Feed data through Internal Distribution, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer. In addition, for External Distribution, the Distribution Fees are similar to or lower than similar products. For example, under the Nasdaq UTP and CTA and CQ Plans, consolidated last sale and bid-ask data are offered for a combined monthly fee of $3,000 for redistribution.[35] The Exchange is proposing Distribution Fees that are less than the fees currently charged by the Nasdaq UTP and CTA and CQ Plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. An exchange's ability to price its proprietary data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary last sale data. Because other exchanges already offer similar products,[36] the Exchange's proposed BATS One Feed will enhance competition. Specifically, the BATS One Feed was developed to compete with similar market data products offered by Nasdaq and NYSE Technologies, an affiliate of the NYSE.[37] The BATS One Feed will foster competition by providing an alternative market data product to those offered by Nasdaq and the NYSE for less cost, as described in more detail in Section 3(b) above. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[38]

The proposed BATS One Feed would enhance competition by offering a market data product that is designed to compete directly with similar products offered by the NYSE and Nasdaq. Nasdaq Basic is a product that includes two feeds, QBBO, which provides BBO information for all U.S. exchange-listed securities on Nasdaq and NLS Plus, which provides last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF,[39] Nasdaq OMX BX, and Nasdaq OMX PSX.[40] Likewise, NYSE BQT includes BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT.[41] As a result, Nasdaq Basic and

[32] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA*.

[33] *See, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); NASDAQ Rules 7023(b), 7047.

[34] The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[35] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA,* Nasdaq UTP fees available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListUTP#uf.*

[36] *See supra* note 5.

[37] *Id.*

[38] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[39] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq TRF).

[40] *See* Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX).

[41] *See* NYSE Technologies BQT, *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

NYSE BQT comprise a significant view of the market on any given day and both include data from multiple trading venues. As the BATS Exchanges are consistently one of the top exchange operators by market share for U.S. equities trading, excluding opening and closing auction volume, the data included within the BATS One Feed will provide investors with an alternative to Nasdaq Basic and NYSE BQT and a new option for obtaining a broad market view, consistent with the primary goal of the market data amendments adopted by Regulation NMS.[42]

The BATS One Feed will not only provide content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. As previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is 60% less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

As the Exchange considers the integration of the BATS One Feed into External Distributor products an important ingredient to the product's success, the Exchange has designed pricing that enables External Distributors to spend three months integrating BATS One Feed data into their products and to enlist new Users to receive the BATS One Feed data for free with no External Distribution charges. In addition, the Exchange is providing External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fees up to the amount of the External Distribution Fee, which could result in the External Distributor paying a discounted or no External Distribution Fee once the free three months period has ended. With the fee incentives in place, External Distributors may freely choose to include the BATS One Feed data into their product thereby increasing competition with External Distributors offering similar products, replace alternative data provided by Nasdaq Basic or NYSE BQT with the BATS One Feed data or enhance their product to include BATS One Feed data along with data offered by competitors to create a distributor product that may be more valuable than the BATS One Feed or any competitor product alone. As with any product, the recipients of the data will determine the value of the data provided by the exchange directly or through an External Distributor. Potential subscribers may opt to disfavor the BATS One Feed based on the content provided or the pricing and may believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed BATS One Feed will impair the ability of External Distributors or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes the BATS One Feed will further enhance competition by providing External Distributors with a data feed that allows them to more quickly and efficiently integrate into their existing products. Today, Distributors subscribe to various market data products offered by single exchanges and resell that data, either separately or in the aggregate, to their subscribers as part of the their own market data offerings. Distributors may incur administrative costs when consolidating and augmenting the data to meet their subscriber's need. Consequently, many External Distributors will simply choose to not take the data because of the effort and cost required to aggregate data from separate feeds into their existing products. Those same Distributors have expressed interest in the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges. The Exchange, therefore, believes that by providing market data that encompasses combined data from affiliated exchanges, the Exchange enables certain External Distributors with the ability to compete in the provision of similar content with other External Distributors, where they may not have done so previously if they were required to subscribe to the depth-of-book feeds from each individual BATS Exchange.

Although the Exchange considers the acceptance of the BATS One Feed by External Distributors as important to the success of the product, depending on their needs, External Distributors may choose not to subscribe to the BATS One Feed and may rather receive the BATS Exchange individual market data products and incorporate them into their specific market data products. For example, the BATS Premium Feed provides depth-of-book information for up to five price levels while each of the BATS Exchange's individual data feeds offer complete depth-of-book and are not limited to five price levels.[43] Those subscribers who wish to view the complete depth-of-book from each individual BATS Exchange may prefer to subscribe to one or all of individual BATS Exchange depth-of-book data feeds instead of the BATS One Feed. The BATS One Feed simply provides another option for Distributors to choose from when selecting a product that meets their market data needs. Subscribers who seek a broader market view but do not need complete depth-of-book may select the BATS One Feed while subscribers that seek the complete depth-of-book information may subscribe to the depth-of-book feeds of each individual BATS Exchanges.

Latency. The BATS One Feed is not intended to compete with similar products offered by External Distributors. Rather, it is intended to assist External Distributors in incorporating aggregated and summarized data from the BATS Exchanges into their own market data products that are provided to the end user. Therefore, Distributors will receive the data, who will, in turn, make available BATS One Feed to their end users, either separately or as incorporated into the various market data products they provide. As stated above, Distributors have expressed a desire for a product like the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the administrative costs of repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchange.

Notwithstanding the above, the Exchange believes that External Distributors may create a product similar to BATS One Feed based on the market data products offered by the individual BATS Exchanges with minimal latency difference. In order to create the BATS One Feed, the Exchange will receive the individual data feeds from each BATS Exchange and, in turn, aggregate and summarize that data to create the BATS One Feed. This is the same process an External Distributor would undergo should it create a market data product similar to the BATS One Feed to distribute to its end users. In addition, the servers of

[42] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[43] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BYX Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

most External Distributors are likely located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each BATS Exchange on or about the same time the Exchange would for it to create the BATS One Feed. Therefore, the Exchange believes that it will not incur any potential latency advantage that will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Existence of Actual Competition. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings and order flow and sales of market data itself, providing virtually limitless opportunities for entrepreneurs who wish to compete in any or all of those areas, including by producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market.

Competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice also has acknowledged the aggressive competition among exchanges, including for the sale of proprietary market data itself. In announcing that the bid for NYSE Euronext by Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. had been abandoned, Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [44]

It is common for broker-dealers to further exploit this recognized competitive constraint by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [45]

In addition, in the case of products that are distributed through market data vendors, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, vendors will not elect to make available the products described herein unless their customers request them, and customers will not elect to purchase them unless they can be used for profit-generating purposes. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[46] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[47]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it

[44] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[45] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

[46] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–Nasdaq–2010–110); Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–Nasdaq–2010–111) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger (''because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade execution services are an example of 'joint products' with 'joint costs.' ''), attachment at pg. 4, *available at www.sec.gov/comments/34-57917/3457917-12.pdf.*

[47] *See generally* Mark Hirschey, FUNDAMENTALS OF MANAGERIAL ECONOMICS, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced invariable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' Quarterly Journal of Economics V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives. As stated above, broker-dealers currently have numerous alternative venues for their order flow, including eleven SRO markets, as well as internalizing BDs and various forms of ATSs, including dark pools and ECNs. Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do so or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, and NYSEArca.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless. The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, and TracECN. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson-Reuters.

Competitive forces constrain the prices that platforms can charge for non-core market information. A trading platform cannot generate market information unless it receives trade orders. For this reason, a platform can be expected to use its market data product as a tool for attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained elsewhere, this does not enable the owner of such information to exercise monopoly power over that information vis-à-vis firms with the need for such information. Even though market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and thus, in the long run, reduces the quality of the information generated by the exchange.

Competition among platforms has driven the Exchange to improve its platform data offerings and to cater to customers' data needs by proposing the BATS One Feed. The vigor of competition for non-core data information is significant and the Exchange believes that this proposal clearly evidences such competition. The Exchange proposes the BATS One Feed and pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with

the Exchange or other exchanges. The explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data information is highly competitive and continually evolves as products develop and change.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, because vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost is not justified by the returns that any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2014–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2014–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BYX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2014–011 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18125 Filed 7–31–14; 8:45 am]

BILLING CODE 8011–01–P

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72682; File No. SR–EDGA–2014–17]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify for Members and Non-Members the Use of Certain Data Feeds for Order Handling and Execution, Order Routing and Regulatory Compliance of EDGA Exchange, Inc.

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 15, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify for Members [3] and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this filing to clarify for Members and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance.

Order Handling and Execution

The Exchange's Matching Engine (the ''ME'') determines whether an order should be displayed, executed internally, or routed to another market center. In making this determination, the ME continually receives and maintains quote data that is delivered from an internal processor (the ''Feed Handler''). The market data processed by the Feed Handler is sourced directly from the Securities Information Processors (''SIP'') feeds.[4] Specifically, the Exchange's ME uses the Consolidated Tape Association (CTA) market data operated by the Securities Industry Automation Corp. in Tapes A and B and Unlisted Trading Privileges (UTP) market data operated by NASDAQ OMX Group, Inc. in Tape C securities.

These SIP feeds contain the best (top-of-book) prices in round lot quotations of each protected venue. The ME utilizes the SIP feeds to obtain the top-of-book quotes. On EDGA, this excludes EDGA's top-of-book quotes, but includes the top-of-book quotes from the Exchange's affiliates, EDGX Exchange, Inc. (''EDGX''), BATS Exchange, Inc. (''BZX''), and BATS Y-Exchange, Inc. (''BYX''). Based on the SIP feeds and the EDGA Book,[5] the ME constructs the NBBO.

The ME will also update the NBBO upon receipt of an Intermarket Sweep Order (''ISO'') with a time-in-force of Day (''Day ISO''). When a Day ISO is posted on the EDGA Book, the ME uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes.[6] The ME will then display and execute non-ISO orders at the same price as the Day ISO.

The NBBO is utilized for order handling and execution. The Exchange looks to its calculation of the NBBO, based on the SIP feeds and the EDGA Book, when determining the mid-point of the NBBO for purposes of a Mid-Point Peg Order[7] and Mid-Point Discretionary Order[8] or the price at which a Pegged Order[9] is to be pegged. The Exchange also utilizes its calculation of the NBBO when re-pricing orders pursuant to Exchange Rule 11.5(c)(4) and when handling NBBO Offset Peg Orders[10] and Route Peg Orders.[11] As described below, the ME will include quotes from market centers that declare self-help in its calculation of the NBBO for the purpose of re-pricing orders whose price depends on the NBBO, such as pegging, midpoint, etc.

Order Routing

When the Exchange has a marketable order with instructions from the sender that the order is eligible to be routed, and the ME identifies that there is no matching price available on the Exchange, but there is a matching price represented at another venue that displays protected quotes, then the ME will send the order to the Routing Engine (''RE'') of Direct Edge ECN LLC (d/b/a DE Route).

In determining whether to route an order, the RE makes its own calculation of the NBBO for a security using quotes disseminated by market centers through proprietary data feeds (''Direct Feeds'') where available and the SIP feeds from those venues where the Exchange does not take the Direct Feeds.[12]

The RE utilizes a third-party market data processor that consumes the Direct Feeds and the SIP feeds, aggregates the quantities of symbols by price level, and redistributes them to an internal quote processor (the ''Quote Server''). The RE will request from the Quote Server a market data snapshot which includes the top-of-book and/or depth-of-book of each market center offering depth-of-book feeds. Based on this snapshot, the RE calculates the NBBO for a security and routes the order, allocating the shares to the venues at each price level up to the limit price of the order, starting with the best protected quotes in accordance with Regulation NMS subject to the Member's instructions. If there are any shares remaining after the response to the initial route is received, the RE will take another snapshot from the Quote Server and send out orders based on the same logic. If the full quantity of the order is not executed after multiple route attempts, the order is returned to the ME.

In addition, the RE utilizes in-flight order information in its routing methodology. The RE tracks the details of each in-flight order, including the quantity routed and the corresponding quote published by the routed venue. After the RE requests a market data snapshot from the Quote Server and the RE has already targeted this quote (identified by venue, symbol, price, quantity and time stamp), then the RE will subtract the routed quantity of in-flight orders from the quote size displayed in the market data snapshot. The RE will route an order for the remaining quantity to the venue. If there are no residual shares, the RE will bypass the quote.

The RE also utilizes responses from other venues displaying protected quotes in its routing methodology. When the RE receives a response from a venue that does not completely fill the order targeting a quote, and no subsequent quote update has been received from that venue at the same price level, the RE will mark that venue's quote as stale at that price level.[13] Absent additional quote updates from that venue, the RE will bypass the quote for one (1) second. After one second, if the quote is still included in the market data snapshot, the RE will target the quote again.

Regulatory Compliance

Locked or Crossed Markets. The ME determines whether the display of an order would lock or cross the market. At the time an order is entered into the ME, the ME will establish, based upon the prevailing top-of-book quotes of other exchanges displaying protected quotes received from the SIP feeds, whether the

[4] As part of the plan of integration pursuant to the merger between Direct Edge Holdings LLC, the holding company for the Exchange, and BATS Global Markets, Inc., in January 2015, the Exchange will transition to the use of quotes disseminated by major protected market centers through proprietary data feeds, and disseminated by the SIP for other protected market centers, to calculate the National Best Bid or Offer (''NBBO''). *See www.bats.com/edgeintegration.* The Exchange will submit a filing to the Commission prior to January 2015 to reflect the transition.

[5] The term ''EDGA Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

[6] Pursuant to Regulation NMS, a broker-dealer routing a Day ISO is required to simultaneously route one or more additional ISOs, as necessary, to execute against the full displayed size of any protected quote priced equal to or better than the Day ISO. *See also* Question 5.02 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

[7] *See* Exchange Rule 11.5(c)(7).

[8] *See* Exchange Rule 11.5(c)(17).

[9] *See* Exchange Rule 11.5(c)(6).

[10] *See* Exchange Rule 11.5(c)(15).

[11] *See* Exchange Rule 11.5(c)(14).

[12] EDGA consumes Direct Feeds from EDGX, BZX and BYX.

[13] Question 11 of the ''Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' describes routing practices in the context of stale quotes, *available at http://www.sec.gov/divisions/marketreg/rule611faq.pdf.*

order will lock or cross the prevailing NBBO for a security. In the event that the order would produce a locking or crossing condition, the ME will cancel the order, re-price [14] the order or route the order based on the Member's instructions. Two exceptions to this logic are Day ISOs and declarations of self-help.

Pursuant to Regulation NMS, when an Exchange receives a Day ISO, the sender of the ISO retains the responsibility to comply with applicable rules relating to locked and crossed markets.[15] In such case, the Exchange is obligated only to display a Day ISO order at the Member's price, even if such price would lock or cross the market.[16]

Declarations of self-help occur when the RE detects that an exchange displaying protected quotes is slow or non-responsive to the Exchange's routed orders. In this circumstance, according to Rule 611(b) of Regulation NMS, the Exchange may display a quotation that may lock or cross quotations from the market where the quotation that it may lock or cross is displayed by the market that the Exchange invoked self-help against.[17] The ME and RE, when they take their market data snapshots, maintain logic that will ignore the quotes generated from the self-helped market in their calculations of the NBBO for execution and routing determinations in compliance with Regulation NMS. The Exchange will also disable all routing to the self-helped market. The ME and Quote Server will continue to consume the self-helped market center's quotes; however, in order to immediately include the quote in the NBBO calculation and enable routing once self-help is revoked. As described above, the Exchange will include quotes from the self-helped market for re-pricing purposes such as pegged orders.

Trade-Through Rule. Pursuant to Rule 611 of Regulation NMS, the Exchange shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on trading centers of protected quotations in NMS stocks that do not fall within a valid exception and, if relying on such an exception, that are reasonably designed to ensure compliance with the terms of the exception. The ME will not permit an execution on the Exchange if there are better-priced protected quotations displayed in the market unless the order is an ISO. At the time an order is entered into the ME, the ME uses the view of the NBBO as described above. If the NBBO is priced better than what is resident on the Exchange, the Exchange will not match such order on the EDGA Book, and based on the Member's instructions, the ME will cancel the order, re-price the order or route the order.

Regulation SHO. The Exchange cannot execute a Short Sale Order [18] equal to or below the current National Best Bid (''NBB'') when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker'').[19] When a Short Sale Circuit Breaker is in effect, the Exchange utilizes information received from the SIP feeds and a view of the EDGA Book to assess its compliance with Rule 201 of Regulation SHO. The NBBO used for compliance with Rule 201 of Regulation SHO includes quotes from market centers against which the Exchange has declared self-help.

Latent or Inaccurate Direct Feeds. Where the Exchange's systems detect problems with one or more Direct Feeds, the Quote Server can manually fail over to the SIP feed to calculate the NBBO for the market center(s) where the applicable Direct Feed is experiencing issues. In order to make this determination, the Quote Server continuously polls every Direct Feed line and generates an email alert if the difference between a quote's sent time (as stamped by the sending market) and the time of receipt by the Exchange exceeds one (1) second.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [20] in general, and furthers the objectives of Section 6(b)(5) of the Act [21] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users.

The Exchange believes that its proposal to describe the Exchange's use of data feeds removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity and transparency. The Exchange's proposal will enable investors to better assess the quality of the Exchange's execution and routing services. The proposal does not change the operation of the Exchange or its use of data feeds; rather it describes how, and for what purposes, the Exchange uses the quotes disseminated from data feeds to calculate the NBBO for a security for purposes of Regulation NMS, Regulation SHO and various order types that update based on changes to the applicable NBBO. The Exchange believes the additional transparency into the operation of the Exchange as described in the proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes the proposal would enhance competition because describing the Exchange's use of data feeds enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[14] *See* Exchange Rule 11.5(c)(4).

[15] *See supra* note 6.

[16] *See supra* note 6.

[17] *See also* Question 5.03 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

[18] *See* Exchange Rule 11.15.

[19] 17 CFR 242.200(g); 17 CFR 242.201. On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201, pursuant to which, among other things, short sale orders in covered securities generally cannot be executed or displayed by a trading center, such as the Exchange, at a price that is at or below the current NBB when a Short Sale Circuit Breaker is in effect for the covered security. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a ''short exempt'' marking requirement. *See also* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (extending the compliance date for Rules 201 and 200(g) to February 28, 2011). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, *www.sec.gov/divisions/marketreg/rule201faq.htm.*

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2014–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2014–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2014–17 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18117 Filed 7–31–14; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72688; File No. SR–BATS–2014–028]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Establish a New Market Data Product Called the BATS One Feed

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a new market data product called the BATS One Feed as well as to establish related market data fees. The text of the proposed BATS One Feed is attached as Exhibit 5A. The proposed changes to the fee schedule are attached as Exhibit 5B. Exhibits 5A and 5B are available on the Exchange's Web site at *www.batstrading.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a new market data product called the BATS One Feed. As described more fully below, the BATS One Feed is a data feed that will disseminate, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on BATS and its affiliated exchanges [3] (collectively, the ''BATS Exchanges'') and for which the BATS Exchanges report quotes under the Consolidated

[3] The Exchange's affiliated exchanges are EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), and BATS Y-Exchange, Inc. (''BYX''). On January 23, 2014, BATS Global Markets, Inc. (''BGMI''), the former parent company of the Exchange and BYX, completed its business combination with Direct Edge Holdings LLC, the parent company of EDGA and EDGX. *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039). Upon completion of the business combination, DE Holdings and BGMI each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.'' and BGMI changed its name to ''BATS Global Markets Holdings, Inc.''

Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[4] The BATS One Feed will also contain the individual last sale information for BATS and each of its affiliated exchanges. In addition, the BATS One Feed will contain optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels.

The BATS One Feed is designed to meet the needs of prospective Members that do not need or are unwilling to pay for the individual book feeds offered by each of the individual BATS Exchanges. In addition, the BATS One Feed offers market data vendors and purchasers a suitable alternative to the use of consolidated data where consolidated data are not required to be purchased or displayed. Finally, the proposed new data feed provides investors with new options for receiving market data and competes with similar market data products offered by NYSE Technologies, an affiliate of the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[5] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[6]

Description of the BATS One Feed

The BATS One Feed will contain the aggregate BBO of the BATS Exchanges for all securities that are traded on the BATS Exchanges and for which the BATS Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The aggregate BBO would include the total size of all orders at the BBO available on all BATS Exchanges.[7] The BATS One Feed would also disseminate last sale information for each of the individual BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). The last sale information will include the price, size, time of execution, and individual BATS Exchange on which the trade was executed. The last sale message will also include the cumulative number of shares executed on all BATS Exchanges for that trading day. The Exchange will disseminate the aggregate BBO of the BATS Exchanges and last sale information through the BATS One Feed no earlier than each individual BATS Exchange provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The BATS One Feed would also consist of Symbol Summary, Market Status, Retail Liquidity Identifier on behalf of BYX, Trading Status, and Trade Break messages. The Symbol Summary message will include the total executed volume across all BATS Exchanges. The Market Status message is disseminated to reflect a change in the status of one of the BATS Exchanges. For example, the Market Status message will indicate whether one of the BATS Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the BATS One Feed as part of the aggregated BBO. The Market Status message will also indicate where BATS Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

The Retail Liquidity Identifier indicator message will be disseminated via the BATS One Feed on behalf of BYX only pursuant to BYX's Retail Price Improvement (''RPI'') Program.[8] The Retail Liquidity Identifier indicates when RPI interest priced at least $0.001 better than BYX's Protected Bid or Protected Offer for a particular security is available in the System. The Exchange proposes to disseminate the Retail Liquidity Indicator via the BATS One Feed in the same manner as it is currently disseminated through consolidated data streams (*i.e.,* pursuant to the Consolidated Tape Association Plan/Consolidated Quotation Plan, or CTA/CQ, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through proprietary BATS data feeds. The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest. In particular, like CQ and UTP quoting outputs, the BATS One Feed will include a field for codes related to the Retail Price Improvement Identifier. The codes indicate RPI interest that is priced better than BYX's Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the Program.

The Trade Break message will indicate when an execution on a BATS Exchange is broken in accordance with the individual BATS Exchange's rules.[9] The Trading Status message will indicate the current trading status of a security on each individual BATS Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker''),[10] or the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

Optional Aggregate Depth of Book. The BATS One Feed will also contain optional functionality which will enable recipients to receive two-sided quotations from the BATS Exchanges for five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (''BATS One Premium Feed''). For each price level on one of the BATS Exchanges, the BATS One Premium Feed option of the BATS One Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.[11]

BATS One Feed Fees

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange

[4] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement the BATS One Feed and its related fees.

[5] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); NYSE Technologies Best Book and Trade (''BQT''), *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[7] The Exchange notes that quotations of odd lot size, which is generally less than 100 shares, are included in the total size of all orders at a particular price level in the BATS One Feed but are currently not reported by the BATS Exchanges to the consolidated tape.

[8] For a description of BYX's RPI Program, *see* BYX Rule 11.24. *See also* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2, to Adopt a Retail Price Improvement Program); Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (August 31, 2012) (SR–BYX–2019–019) (Notice of Filing of Proposed Rule Change to Adopt a Retail Price Improvement Program).

[9] *See, e.g., Exchange [sic] and EDGA Rule 11.13, Clearly Erroneous Executions, and BATS and BYX Rule 11.17, Clearly Erroneous Executions.*

[10] 17 CFR 242.200(g); 17 CFR 242.201

[11] Recipients who do not elect to receive the BATS One Premium Feed will receive the aggregate BBO of the BATS Exchanges under the BATS Summary Feed, which, unlike the BATS Premium Feed, would not delineate the size available at the BBO on each individual BATS Exchange.

proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees; [12] (ii) Usage Fees for both Professional and Non-Professional Users; [13] and (iii) Enterprise Fees.[14] The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distribution Fees.

Definitions. The Exchange also proposes to include in its fee schedule the following defined terms that relate to the BATS One Feed fees.

• ''Distributor'' will be defined as ''any entity that receives the BATS One Feed directly from BATS or indirectly through another entity and then distributes it internally or externally to a third party.'' [15]

• ''Internal Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users within the Distributor's own entity.'' [16]

• ''External Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users outside the Distributor's own entity.'' [17]

• ''User'' will be defined as a ''natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.''

• ''Non-Professional User'' will be defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.'' [18]

• ''Professional User'' will be defined as ''any User other than a Non-Professional User.'' [19]

Internal Distribution Fees. Each Internal Distributor that receives only the BATS One Summary Feed shall pay an Internal Distributor Fee of $10,000.00 per month. Each Internal Distributor shall pay an Internal Distributor Fee of $15,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange will charge no usage fees for BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

External Distribution Fees. The Exchange proposes to charge those firms that distribute the BATS One Feed externally an External Distributor Fee of $2,500.00 per month for the BATS One Summary Feed. Each External Distributor shall pay an External Distributor Fee of $5,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.

In addition to Internal and External Distribution Fees, the Exchange also proposes to charge recipient firms who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $10.00 per user for receipt of the BATS One Summary Feed or $15.00 per user who elect to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user where they elects to also receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.[20] Distributors must report all Professional and Non-Professional Users in accordance with the following:

• In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

• The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

• External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

• If an External Distributor entitles one or more individuals to use the same device, the External Distributor should

[12] The Exchange notes that distribution fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 7019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[13] The Exchange notes that usage fees as well as the distinctions based on professional and non-professional subscribers have been previously filed with or approved by the Commission by Nasdaq and the NYSE. *See* Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102).

[14] The Exchange notes that enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. *See* Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR–NYSE–2013–58); 70010 (July 19, 2013) (File No. SR–CTA/CQ–2013–04).

[15] The proposed definition of ''Distributor'' is similar to Nasdaq Rule 7047(d)(1).

[16] The proposed definition of ''Internal Distributor'' is similar to Nasdaq Rule 7047(d)(1)(A).

[17] The proposed definition of ''External Distributor'' is similar to Nasdaq Rule 7047(d)(1)(B).

[18] The proposed definition of ''Professional User'' is similar to Nasdaq Rule 7047(d)(3)(A).

[19] The proposed definition of ''Non-Professional User'' is similar to Nasdaq Rule 7047(d)(3)(B).

[20] Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms whose Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a $5,000.00 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling $5,000.00 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $4,000.00 of monthly usage, it will pay a net of $1,000 for the Distributor Fee.

Enterprise Fee. The Exchange also proposes to establish a $50,000.00 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an external distributor to receive the data for an unlimited number of Professional and Non-Professional Users and $100,000.00 per month for recipient firms who elect to also receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Subscribers who each receive the BATS One Summary Feed portion of the BATS One Feed at $10.00 per month, then that recipient firm will pay $150,000.00 per month in Professional Subscriber fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $50,000.00 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such Subscriber to be covered by an Enterprise Fee rather than by per-Subscriber fees. A Subscriber that pays the Enterprise Fee will not have to report the number of such Subscribers on a monthly basis. However, every six months, a Subscriber must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trading Notice to be published as soon as practicable following approval of the proposed rule change by the Commission. The Exchange anticipates making available the BATS One Feed for evaluation as soon as practicable after approval of the proposed rule change by the Commission.

2. Statutory Basis

The BATS One Feed

The Exchange believes that the proposed BATS One Feed is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the BATS One Feed. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time last sale information and best-bid-and-offer information contained in the BATS One Feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [23] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[24] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[25]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. The BATS One Feed is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

BATS One Feed Fees

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,[26] in general, and Section 6(b)(4) of the Act,[27] in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among users and recipients of the data and are not

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1.

[24] *See* 17 CFR 242.603.

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4).

designed to permit unfair discrimination among customers, brokers, or dealers. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Exchange also notes that products described herein are entirely optional. Firms are not required to purchase the BATS One Feed. Firms have a wide variety of alternative market data products from which to choose. Moreover, the Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers. The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of market forces to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' [28]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [29]

The 2010 Dodd-Frank amendments to the Exchange Act reinforce the court's conclusions about congressional intent. On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.'' The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act. As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[30] In addition, the existence of alternatives to these data products, such as proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in their greater availability to Professional and Non-Professional Users. Moreover, introducing a Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data and provides the same data that is available to Professional Users.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of $26 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $100,000 per month for distribution to an unlimited number of non-professional users or $365,000 per month for up to 16,000 professional users, plus $2 for each additional professional user over 16,000.[31] The Exchange notes that Nasdaq Basic also offers data for Nasdaq OMX BX and Nasdaq OMX PSX, as described below. The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT, for a monthly fee of $18 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. BATS's proposed per-user fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of $20–$50 per device, depending on the number of professional subscribers, and $1.00 per non-professional subscriber, depending on the number of non-professional subscribers.[32] A monthly enterprise fee of $686,400 is available under which a

[28] *Id.* at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

[29] *Id.*

[30] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[31] *See* Nasdaq Rule 7047.

[32] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA.*

U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its nonprofessional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

Enterprise Fee. The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per user structure and benefit from the per user fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users that select these products. The fee structure of differentiated professional and non-professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[33] Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.[34] The Exchange believes that the Distribution Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distribution fee is higher than those of competitor products, there are no usage fees assessed for Users that receive the BATS One Feed data through Internal Distribution, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer. In addition, for External Distribution, the Distribution Fees are similar to or lower than similar products. For example, under the Nasdaq UTP and CTA and CQ Plans, consolidated last sale and bid-ask data are offered for a combined monthly fee of $3,000 for redistribution.[35] The Exchange is proposing Distribution Fees that are less than the fees currently charged by the Nasdaq UTP and CTA and CQ Plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. An exchange's ability to price its proprietary data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary last sale data. Because other exchanges already offer similar products,[36] the Exchange's proposed BATS One Feed will enhance competition. Specifically, the BATS One Feed was developed to compete with similar market data products offered by Nasdaq and NYSE Technologies, an affiliate of the NYSE.[37] The BATS One Feed will foster competition by providing an alternative market data product to those offered by Nasdaq and the NYSE for less cost, as described in more detail in Section 3(b) above. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[38]

The proposed BATS One Feed would enhance competition by offering a market data product that is designed to compete directly with similar products offered by the NYSE and Nasdaq. Nasdaq Basic is a product that includes two feeds, QBBO, which provides BBO information for all U.S. exchange-listed securities on Nasdaq and NLS Plus, which provides last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF,[39] Nasdaq OMX BX, and Nasdaq OMX PSX.[40] Likewise, NYSE BQT includes BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT.[41] As a result, Nasdaq Basic and NYSE BQT comprise a significant view of the market on any given day and both include data from multiple trading venues. As the BATS Exchanges are consistently one of the top exchange operators by market share for U.S. equities trading, excluding opening and closing auction volume, the data included within the BATS One Feed

[33] *See, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); NASDAQ Rules 7023(b), 7047.

[34] The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[35] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA,* Nasdaq UTP fees available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListUTP#uf.*

[36] *See supra* note 5.

[37] *Id.*

[38] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[39] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq TRF).

[40] *See* Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX).

[41] *See* NYSE Technologies BQT, *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

will provide investors with an alternative to Nasdaq Basic and NYSE BQT and a new option for obtaining a broad market view, consistent with the primary goal of the market data amendments adopted by Regulation NMS.[42]

The BATS One Feed will not only provide content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. As previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is 60% less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

As the Exchange considers the integration of the BATS One Feed into External Distributor products an important ingredient to the product's success, the Exchange has designed pricing that enables External Distributors to spend three months integrating BATS One Feed data into their products and to enlist new Users to receive the BATS One Feed data for free with no External Distribution charges. In addition, the Exchange is providing External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fees up to the amount of the External Distribution Fee, which could result in the External Distributor paying a discounted or no External Distribution Fee once the free three months period has ended. With the fee incentives in place, External Distributors may freely choose to include the BATS One Feed data into their product thereby increasing competition with External Distributors offering similar products, replace alternative data provided by Nasdaq Basic or NYSE BQT with the BATS One Feed data or enhance their product to include BATS One Feed data along with data offered by competitors to create a distributor product that may be more valuable than the BATS One Feed or any competitor product alone. As with any product, the recipients of the data will determine the value of the data provided by the exchange directly or through an External Distributor. Potential subscribers may opt to disfavor the BATS One Feed based on the content provided or the pricing and may believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed BATS One Feed will impair the ability of External Distributors or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes the BATS One Feed will further enhance competition by providing External Distributors with a data feed that allows them to more quickly and efficiently integrate into their existing products. Today, Distributors subscribe to various market data products offered by single exchanges and resell that data, either separately or in the aggregate, to their subscribers as part of the their own market data offerings. Distributors may incur administrative costs when consolidating and augmenting the data to meet their subscriber's need. Consequently, many External Distributors will simply choose to not take the data because of the effort and cost required to aggregate data from separate feeds into their existing products. Those same Distributors have expressed interest in the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges. The Exchange, therefore, believes that by providing market data that encompasses combined data from affiliated exchanges, the Exchange enables certain External Distributors with the ability to compete in the provision of similar content with other External Distributors, where they may not have done so previously if they were required to subscribe to the depth-of-book feeds from each individual BATS Exchange.

Although the Exchange considers the acceptance of the BATS One Feed by External Distributors as important to the success of the product, depending on their needs, External Distributors may choose not to subscribe to the BATS One Feed and may rather receive the BATS Exchange individual market data products and incorporate them into their specific market data products. For example, the BATS Premium Feed provides depth-of-book information for up to five price levels while each of the BATS Exchange's individual data feeds offer complete depth-of-book and are not limited to five price levels.[43] Those subscribers who wish to view the complete depth-of-book from each individual BATS Exchange may prefer to subscribe to one or all of individual BATS Exchange depth-of-book data feeds instead of the BATS One Feed. The BATS One Feed simply provides another option for Distributors to choose from when selecting a product that meets their market data needs. Subscribers who seek a broader market view but do not need complete depth-of-book may select the BATS One Feed while subscribers that seek the complete depth-of-book information may subscribe to the depth-of-book feeds of each individual BATS Exchanges.

Latency. The BATS One Feed is not intended to compete with similar products offered by External Distributors. Rather, it is intended to assist External Distributors in incorporating aggregated and summarized data from the BATS Exchanges into their own market data products that are provided to the end user. Therefore, Distributors will receive the data, who will, in turn, make available BATS One Feed to their end users, either separately or as incorporated into the various market data products they provide. As stated above, Distributors have expressed a desire for a product like the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the administrative costs of repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges.

Notwithstanding the above, the Exchange believes that External Distributors may create a product similar to BATS One Feed based on the market data products offered by the individual BATS Exchanges with minimal latency difference. In order to create the BATS One Feed, the Exchange will receive the individual data feeds from each BATS Exchange and, in turn, aggregate and summarize that data to create the BATS One Feed. This is the same process an External Distributor would undergo should it create a market data product similar to the BATS One Feed to distribute to its end users. In addition, the servers of most External Distributors are likely located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each BATS Exchange on or about the same time the Exchange would for it to create the BATS One Feed. Therefore, the Exchange believes that it will not incur any potential latency advantage that

[42] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[43] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BATS Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Existence of Actual Competition. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings and order flow and sales of market data itself, providing virtually limitless opportunities for entrepreneurs who wish to compete in any or all of those areas, including by producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market.

Competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice also has acknowledged the aggressive competition among exchanges, including for the sale of proprietary market data itself. In announcing that the bid for NYSE Euronext by Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. had been abandoned, Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [44]

It is common for broker-dealers to further exploit this recognized competitive constraint by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [45]

In addition, in the case of products that are distributed through market data vendors, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, vendors will not elect to make available the products described herein unless their customers request them, and customers will not elect to purchase them unless they can be used for profit-generating purposes. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[46] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[47]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data

[44] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[45] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

[46] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–Nasdaq–2010–110); Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–Nasdaq–2010–111) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger (''because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade execution services are an example of 'joint products' with 'joint costs.'''), attachment at pg. 4, *available at www.sec.gov/comments/34-57917/3457917-12.pdf.*

[47] *See generally* Mark Hirschey, FUNDAMENTALS OF MANAGERIAL ECONOMICS, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced invariable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis . . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' Quarterly Journal of Economics V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives. As stated above, broker-dealers currently have numerous alternative venues for their order flow, including eleven SRO markets, as well as internalizing BDs and various forms of ATSs, including dark pools and ECNs. Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do so or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, and NYSEArca.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless. The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, and TracECN. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson-Reuters.

Competitive forces constrain the prices that platforms can charge for non-core market information. A trading platform cannot generate market information unless it receives trade orders. For this reason, a platform can be expected to use its market data product as a tool for attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained elsewhere, this does not enable the owner of such information to exercise monopoly power over that information vis-à-vis firms with the need for such information. Even though market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and thus, in the long run, reduces the quality of the information generated by the exchange.

Competition among platforms has driven the Exchange to improve its platform data offerings and to cater to customers' data needs by proposing the BATS One Feed. The vigor of competition for non-core data information is significant and the Exchange believes that this proposal clearly evidences such competition. The Exchange proposes the BATS One Feed and pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges. The explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data

information is highly competitive and continually evolves as products develop and change.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, because vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost is not justified by the returns that any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–028 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–028 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18123 Filed 7–31–14; 8:45 am]

BILLING CODE 8011–01–P

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72683; File No. SR–EDGX–2014–20]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify for Members and Non-Members the Use of Certain Data Feeds for Order Handling and Execution, Order Routing and Regulatory Compliance of EDGX Exchange, Inc.

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 15, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify for Members [3] and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this filing to clarify for Members and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance.

Order Handling and Execution

The Exchange's Matching Engine (the ''ME'') determines whether an order should be displayed, executed internally, or routed to another market center. In making this determination, the ME continually receives and maintains quote data that is delivered from an internal processor (the ''Feed Handler''). The market data processed by the Feed Handler is sourced directly from the Securities Information Processors (''SIP'') feeds.[4] Specifically, the Exchange's ME uses the Consolidated Tape Association (CTA) market data operated by the Securities Industry Automation Corp. in Tapes A and B and Unlisted Trading Privileges (UTP) market data operated by NASDAQ OMX Group, Inc. in Tape C securities.

These SIP feeds contain the best (top-of-book) prices in round lot quotations of each protected venue. The ME utilizes the SIP feeds to obtain the top-of-book quotes. On EDGX, this excludes EDGX's top-of-book quotes, but includes the top-of-book quotes from the Exchange's affiliates, EDGA Exchange, Inc. (''EDGA''), BATS Exchange, Inc. (''BZX''), and BATS Y-Exchange, Inc. (''BYX''). Based on the SIP feeds and the EDGX Book,[5] the ME constructs the NBBO.

The ME will also update the NBBO upon receipt of an Intermarket Sweep Order (''ISO'') with a time-in-force of Day (''Day ISO''). When a Day ISO is posted on the EDGX Book, the ME uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes.[6] The ME will then display and execute non-ISO orders at the same price as the Day ISO.

The NBBO is utilized for order handling and execution. The Exchange looks to its calculation of the NBBO, based on the SIP feeds and the EDGX Book, when determining the mid-point of the NBBO for purposes of a Mid-Point Match Order[7] or the price at which a Pegged Order[8] is to be pegged. The Exchange also utilizes its calculation of the NBBO when re-pricing orders pursuant to Exchange Rule 11.5(c)(4) and when handling NBBO Offset Peg Orders[9] and Route Peg Orders.[10] As described below, the ME will include quotes from market centers that declare self-help in its calculation of the NBBO for the purpose of re-pricing orders whose price depends on the NBBO, such as pegging, midpoint, etc.

Order Routing

When the Exchange has a marketable order with instructions from the sender that the order is eligible to be routed, and the ME identifies that there is no matching price available on the Exchange, but there is a matching price represented at another venue that displays protected quotes, then the ME will send the order to the Routing Engine (''RE'') of Direct Edge ECN LLC (d/b/a DE Route).

In determining whether to route an order, the RE makes its own calculation of the NBBO for a security using quotes disseminated by market centers through proprietary data feeds (''Direct Feeds'') where available and the SIP feeds from those venues where the Exchange does not take the Direct Feeds.[11]

The RE utilizes a third-party market data processor that consumes the Direct Feeds and the SIP feeds, aggregates the quantities of symbols by price level, and redistributes them to an internal quote processor (the ''Quote Server''). The RE will request from the Quote Server a market data snapshot which includes the top-of-book and/or depth-of-book of each market center offering depth-of-book feeds. Based on this snapshot, the RE calculates the NBBO for a security and routes the order, allocating the shares to the venues at each price level up to the limit price of the order, starting with the best protected quotes in accordance with Regulation NMS subject to the Member's instructions. If there are any shares remaining after the response to the initial route is received, the RE will take another snapshot from the Quote Server and send out orders based on the same logic. If the full quantity of the order is not executed after multiple route attempts, the order is returned to the ME.

In addition, the RE utilizes in-flight order information in its routing methodology. The RE tracks the details of each in-flight order, including the quantity routed and the corresponding quote published by the routed venue. After the RE requests a market data snapshot from the Quote Server and the RE has already targeted this quote (identified by venue, symbol, price, quantity and time stamp), then the RE will subtract the routed quantity of in-flight orders from the quote size displayed in the market data snapshot. The RE will route an order for the remaining quantity to the venue. If there are no residual shares, the RE will bypass the quote.

The RE also utilizes responses from other venues displaying protected quotes in its routing methodology. When the RE receives a response from a venue that does not completely fill the order targeting a quote, and no subsequent quote update has been received from that venue at the same price level, the RE will mark that venue's quote as stale at that price level.[12] Absent additional quote updates from that venue, the RE will bypass the quote for one (1) second. After one second, if the quote is still included in the market data snapshot, the RE will target the quote again.

Regulatory Compliance

Locked or Crossed Markets. The ME determines whether the display of an order would lock or cross the market. At the time an order is entered into the ME, the ME will establish, based upon the prevailing top-of-book quotes of other exchanges displaying protected quotes received from the SIP feeds, whether the order will lock or cross the prevailing NBBO for a security. In the event that

[4] As part of the plan of integration pursuant to the merger between Direct Edge Holdings LLC, the holding company for the Exchange, and BATS Global Markets, Inc., in January 2015, the Exchange will transition to the use of quotes disseminated by major protected market centers through proprietary data feeds, and disseminated by the SIP for other protected market centers, to calculate the National Best Bid or Offer (''NBBO''). *See www.bats.com/edgeintegration.* The Exchange will submit a filing to the Commission prior to January 2015 to reflect the transition.

[5] The term ''EDGX Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

[6] Pursuant to Regulation NMS, a broker-dealer routing a Day ISO is required to simultaneously route one or more additional ISOs, as necessary, to execute against the full displayed size of any protected quote priced equal to or better than the Day ISO. *See also* Question 5.02 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

[7] *See* Exchange Rule 11.5(c)(7).

[8] *See* Exchange Rule 11.5(c)(6).

[9] *See* Exchange Rule 11.5(c)(15).

[10] *See* Exchange Rule 11.5(c)(17).

[11] EDGX consumes Direct Feeds from EDGA, BZX and BYX.

[12] Question 11 of the ''Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' describes routing practices in the context of stale quotes, *available athttp://www.sec.gov/divisions/marketreg/rule611faq.pdf.*

the order would produce a locking or crossing condition, the ME will cancel the order, re-price [13] the order or route the order based on the Member's instructions. Two exceptions to this logic are Day ISOs and declarations of self-help.

Pursuant to Regulation NMS, when an Exchange receives a Day ISO, the sender of the ISO retains the responsibility to comply with applicable rules relating to locked and crossed markets.[14] In such case, the Exchange is obligated only to display a Day ISO order at the Member's price, even if such price would lock or cross the market.[15]

Declarations of self-help occur when the RE detects that an exchange displaying protected quotes is slow or non-responsive to the Exchange's routed orders. In this circumstance, according to Rule 611(b) of Regulation NMS, the Exchange may display a quotation that may lock or cross quotations from the market where the quotation that it may lock or cross is displayed by the market that the Exchange invoked self-help against.[16] The ME and RE, when they take their market data snapshots, maintain logic that will ignore the quotes generated from the self-helped market in their calculations of the NBBO for execution and routing determinations in compliance with Regulation NMS. The Exchange will also disable all routing to the self-helped market. The ME and Quote Server will continue to consume the self-helped market center's quotes; however, in order to immediately include the quote in the NBBO calculation and enable routing once self-help is revoked. As described above, the Exchange will include quotes from the self-helped market for re-pricing purposes such as pegged orders.

Trade-Through Rule. Pursuant to Rule 611 of Regulation NMS, the Exchange shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on trading centers of protected quotations in NMS stocks that do not fall within a valid exception and, if relying on such an exception, that are reasonably designed to ensure compliance with the terms of the exception. The ME will not permit an execution on the Exchange if there are better-priced protected quotations displayed in the market unless the order is an ISO. At the time an order is entered into the ME, the ME uses the view of the NBBO as described above. If the NBBO is priced better than what is resident on the Exchange, the Exchange will not match such order on the EDGX Book, and based on the Member's instructions, the ME will cancel the order, re-price the order or route the order.

Regulation SHO. The Exchange cannot execute a Short Sale Order [17] equal to or below the current National Best Bid (''NBB'') when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker'').[18] When a Short Sale Circuit Breaker is in effect, the Exchange utilizes information received from the SIP feeds and a view of the EDGX Book to assess its compliance with Rule 201 of Regulation SHO. The NBBO used for compliance with Rule 201 of Regulation SHO includes quotes from market centers against which the Exchange has declared self-help.

Latent or Inaccurate Direct Feeds. Where the Exchange's systems detect problems with one or more Direct Feeds, the Quote Server can manually fail over to the SIP feed to calculate the NBBO for the market center(s) where the applicable Direct Feed is experiencing issues. In order to make this determination, the Quote Server continuously polls every Direct Feed line and generates an email alert if the difference between a quote's sent time (as stamped by the sending market) and the time of receipt by the Exchange exceeds one (1) second.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(5) of the Act [20] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users.

The Exchange believes that its proposal to describe the Exchange's use of data feeds removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity and transparency. The Exchange's proposal will enable investors to better assess the quality of the Exchange's execution and routing services. The proposal does not change the operation of the Exchange or its use of data feeds; rather it describes how, and for what purposes, the Exchange uses the quotes disseminated from data feeds to calculate the NBBO for a security for purposes of Regulation NMS, Regulation SHO and various order types that update based on changes to the applicable NBBO. The Exchange believes the additional transparency into the operation of the Exchange as described in the proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes the proposal would enhance competition because describing the Exchange's use of data feeds enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[13] *See* Exchange Rule 11.5(c)(4).

[14] *See supra* note 6 [sic].

[15] *See supra* note 6.

[16] *See also* Question 5.03 in the ''Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS'' (last updated April 4, 2008) *available at http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

[17] *See* Exchange Rule 11.15.

[18] 17 CFR 242.200(g); 17 CFR 242.201. On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201, pursuant to which, among other things, short sale orders in covered securities generally cannot be executed or displayed by a trading center, such as the Exchange, at a price that is at or below the current NBB when a Short Sale Circuit Breaker is in effect for the covered security. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a ''short exempt'' marking requirement. *See also* Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (extending the compliance date for Rules 201 and 200(g) to February 28, 2011). *See also* Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, *www.sec.gov/divisions/marketreg/rule201faq.htm.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2014–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2014–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2014–20 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18118 Filed 7–31–14; 8:45 am]

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72680; File No. SR–NYSEMKT–2014–63]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Removing Building Access and Other Restrictions on Traders Conducting Certain Futures and Options Trading on ICE Futures U.S., Inc. in Space Rented From the Exchange

July 28, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 15, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove building access and other restrictions on traders conducting certain futures and options trading on ICE Futures U.S., Inc. (''IFUS'') [4] in space rented from the Exchange (the ''IFUS Trading Floor''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove the building access and other restrictions on the IFUS traders conducting certain futures and options trading on the IFUS Trading Floor, currently located in Exchange facilities at 20 Broad Street (the ''IFUS Traders'').[5]

[4] IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission (''CFTC'').

[5] On November 13, 2013, pursuant to the Amended and Restated Agreement and Plan of Merger, dated as of March 19, 2013, by and among IntercontinentalExchange, Inc. (''ICE''), IntercontinentalExchange Group, Inc. (the ''Company''), NYSE Euronext, Braves Merger Sub, Inc. (''Braves Merger Sub'') and NYSE Euronext Holdings LLC (formerly known as Baseball Merger Sub, LLC), Braves Merger Sub was merged with and into ICE and NYSE Euronext was merged with and into NYSE Euronext Holdings (the ''Mergers''). As a result of the Mergers, NYSE Euronext and ICE are wholly-owned subsidiaries of the Company. NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns,

Continued

Background

On February 13, 2013, the Exchange filed a proposed rule change to relocate trading of certain futures and options contracts conducted on IFUS from rented space at the New York Mercantile Exchange (''NYMEX'') to trading space at 20 Broad Street, New York, New York, commonly known as the ''Blue Room'', and to amend NYSE MKT Rule 6A—Equities, which defines the terms ''Trading Floor'' and ''NYSE Amex Options Trading Floor'' (the ''Original Filing'').[6] The Original Filing stated that the IFUS Traders relocating to 20 Broad Street and their clerical employees[7] would only utilize the 18 Broad Street entrance to access the Blue Room[8] and, once inside, be prohibited from entering the Main Room, where most of the NYSE MKT and New York Stock Exchange LLC (''NYSE'') Equities Floor brokers and all NYSE MKT and NYSE Designated Market Makers (''DMMs'') are located, as well as the NYSE Amex Options trading floor. In addition, the Original Filing represented that the IFUS Traders would sit together in dedicated booth space approximately 40 feet long by 10 feet wide with privacy barriers consisting of eight foot walls on both sides except for the two gated and badge access entry and exit security doors at the front and back of the booth, which are four feet high. A compliance officer from IFUS Market Regulation is also present in the Blue Room performing on-site surveillance on a regular basis.

On June 3, 2013, the Exchange filed a proposed rule change to clarify that the IFUS Traders may, on an as needed basis and only prior to 7 a.m., access the Blue Room via the Exchange's 11 Wall Street facilities, which would entail walking through the Main Room to access the Blue Room, and that the IFUS Traders may access the Blue Room via the Exchange's 11 Wall Street facilities on days that the Exchange is closed (the ''Supplemental Filing'').[9]

Proposed Rule Change

The Exchange now proposes to remove certain restrictions on the IFUS Traders set forth in the Original and Supplemental Filings. In particular, the Exchange proposes to eliminate the building access restrictions, which would allow the IFUS Traders to enter the Exchange's facilities from either the 11 Wall Street or 18 Broad Street entrances. The Exchange further proposes to eliminate the restriction on the IFUS Traders entering or crossing the Main Room in order to access the IFUS Trading Floor. Finally, the Exchange proposes to remove the gated and badge access entry and exit security doors at the front and back of the IFUS Traders' booth (the ''Proposal'').

The Exchange does not believe that removing the restrictions on the IFUS Traders entering or crossing the Main Room would provide the IFUS Traders with an unfair competitive advantage over other market participants. As set forth in the previous filings, IFUS trades its products exclusively on an electronic trading platform. Notwithstanding that there is still a physical IFUS Trading Floor, there is no open outcry trading on that floor. IFUS lists and trades futures and options on futures on cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, foreign currencies, and certain Russell Indices[10] (the ''IFUS Contracts''). The 24 IFUS Traders (down from 40 last year)[11] utilize the IFUS Trading Floor as a place from which they may accept customer orders for IFUS Contracts by telephone or electronically and enter such orders electronically to the IFUS trading platform. IFUS Traders are prohibited by IFUS rules from orally discussing orders or transactions with each other while on the IFUS Trading Floor. Instead, communications between IFUS Traders on the IFUS Trading Floor must be made via instant message, email, or recorded telephone line. Order tickets are prepared and time-stamped for each customer order. IFUS Traders may also enter orders electronically for their own proprietary account. Four of the 24 IFUS Traders engage in proprietary-only trading, while the rest enter customer orders for execution and engage in proprietary trading on IFUS. While IFUS Traders effect transactions in all IFUS Contracts, they predominantly trade options on cotton futures.[12]

IFUS traders can only conduct trading in IFUS products from within IFUS Trading Floor space via terminals located in the IFUS Trading Floor; they do not have wireless hand-held devices. Accordingly, the IFUS Traders could not conduct any trading in futures from any other location, for example, at an equities trading post in the Main Room. In addition, none of the IFUS Traders are registered to trade any of the securities traded on the Exchange, nor does any have the capability to enter orders in Exchange-traded securities from the IFUS Trading Floor via the IFUS electronic trading system.

The Exchange further notes that there is a limited nexus between products that trade on IFUS and those that trade on the Exchange. The only IFUS Contracts that are related to Exchange-traded products are futures and options on futures on certain Russell indexes, all of which are broad-based indexes as defined in Section 3(a)(55)(C)(vi) of the Securities Exchange Act of 1934.[13] As the Commission previously found, a market participant's ability to manipulate the price of broad-based ETFs, Trust Issued Receipts or related options is limited.[14]

Moreover, given that IFUS Traders represent only a small proportion of IFUS's total trading volume, the Exchange does not believe IFUS Traders would be in possession of any non-public information that could be used by Exchange members to their advantage or to gain an unfair competitive advantage over other market participants. As noted in the previous filings, approximately 83% of IFUS's total daily contract volume is in IFUS energy contracts. The IFUS Traders transact less than 5% of the 17% of IFUS's average daily volume that is not related to energy contracts

among other things, 100% of the equity interest of the Exchange. IFUS is a wholly-owned subsidiary of ICE.

[6] *See* Securities Exchange Act Release Nos. 68997 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR–NYSEMKT–2013–13).

[7] Currently, there are 24 IFUS Traders and 13 clerical staff on the IFUS Trading Floor. At the time of the Original Filing, there were 40 IFUS Traders.

[8] Specifically, the IFUS Traders must use the 18 Broad Street entrance elevator and enter the Trading Floor using the turnstile nearest the Blue Room. The Exchange has been monitoring badge swipes at other locations to identify instances where the IFUS Traders utilize a different entrance and referring those findings to IFUS Compliance for appropriate action. Last year, there were approximately 22 instances in which individual IFUS Traders or their clerical staff used an entrance or turnstile other than 18 Broad entrance and turnstiles authorized for their use. However, IFUS Compliance found that all of these were inadvertent use of either of a wrong turnstile for the 18 Broad St. entrance, another entrance necessitated for use when gaining visitor access or when the 18 Broad St. entrance was temporarily inaccessible, or to access a bathroom, and therefore, chose not to take any disciplinary action.

[9] Certain of the IFUS Traders conduct business on foreign markets on Exchange holidays. *See* Securities Exchange Act Release Nos. 69764 (June 13, 2013), 78 FR 37259 (June 20, 2013) (SR–NYSEMKT–2013–49).

[10] These include the Russell 2000, Russell 1000, and Russell Value and Growth, all of which qualify as broad-based indices. The Exchange understands, however, that the IFUS Traders trade only a small volume of the Russell products and, of that small volume, most is in the Russell 2000 mini-contracts.

[11] No IFUS Traders are members of the Exchange, NYSE or NYSE Amex Options.

[12] *See* Securities Exchange Act Release Nos. 68997 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR–NYSEMKT–2013–13).

[13] 15 U.S.C. 78c(a)(55)(A). IFUS product offerings have historically been benchmark futures and options contracts relating to agricultural products, currencies, and broad-based market indexes. There are no plans to offer single stock futures on IFUS.

[14] *See* Exchange Act Release No. 46213 (July 16, 2002) (SR–Amex 2002–21).

and a fraction of 1% of the total average daily IFUS volume (which includes the energy contracts transacted on IFUS). Further, pricing information about the products traded on the IFUS Trading Floor—cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, broad-based equity indices and foreign currencies—is contemporaneously and publicly available on Bloomberg and other quotation reporting systems. To the extent there is any correlation between the price movements of the products traded on the IFUS Trading Floor and Exchange-listed companies with exposure to those commodity-based products, the Exchange notes that such information is publicly available and IFUS Traders are not in possession of any non-public information regarding pricing of such products that could be used improperly by the IFUS Traders or Exchange members.

Finally, the Exchange's experience with the IFUS Trading Floor the past year has not given the Exchange reason to believe that there is an increased likelihood of potentially collusive trading. To date, the Financial Industry Regulatory Authority, Inc. (''FINRA'') has not identified any regulatory or other concerns about the IFUS Traders, identified suspicious activity or behavior, or identified instances where confidential order information was compromised or inappropriately used.

The Exchange further notes that important safeguards will remain in place. The IFUS Traders will continue to sit together in segregated booth space with privacy barriers to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders. An IFUS Market Regulation compliance officer will continue to be present performing on-site surveillance on a regular basis. The Exchange's equities and options on-Floor surveillance staff will also continue to be located near the IFUS Trading Floor. Moreover, FINRA has been provided with the names of the IFUS Traders to assist in identifying any potentially violative trading involving the IFUS Traders.[15] The Exchange has reminded its members and member organizations to protect the confidentiality of nonpublic order and trade information, and that members and employees of member organizations should not engage in any trading, order or market related communications with the IFUS Traders or their clerical staff.[16]

In short, based on the limited trading conducted by the IFUS Traders, the extremely negligible trading in related products, the experience with the IFUS Trading Floor during the past year and the significant controls that will remain in place, the Exchange does not believe that prescribing the manner in which the IFUS Traders enter the Exchange's facilities or prohibiting the IFUS Traders from entering or crossing the Main Room on the way to the IFUS Trading Floor serves a necessary regulatory purpose.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,[17] in general, and Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the Proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it would eliminate restrictions on the manner that IFUS Traders may access the IFUS Trading Floor that are not necessary for the protection of investors or the public interest given that the only securities related to IFUS Contracts are securities based on broad-based indexes. The Exchange further believes that eliminating the building access and other restrictions will enable IFUS Traders to efficiently and effectively conduct business on the IFUS Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange additional flexibility to maximize the use of its trading floor space.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2014–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[15] Providing the names of the IFUS Traders to FINRA was for the purpose of regulatory information sharing. Neither the Exchange nor FINRA will be responsible for regulating or surveilling the IFUS Traders' activity, and the IFUS Traders are not subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS.

[16] *See* Member Education Bulletin 2013–5 (March 20, 2013), available at *http://www.nyse.com/nysenotices/nyse/education-bulletins/pdf.action?memo_id=2013-5*.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–63 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18115 Filed 7–31–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72684; File No. SR–NASDAQ–2014–072]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Disclose Publicly the Sources of Data Used for Exchange Functions

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 15, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes a rule change to disclose publicly the sources of data, whether from the network processors or from direct data feeds, that NASDAQ utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In her June 5, 2014 market structure speech, the Chair requested that all national securities exchanges review and disclose their policies and procedures governing the market data used when performing important exchange functions.[3] In a letter dated June 20, 2014, the Director of the Division of Trading and Markets codified this request:

> We believe there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof, are used by the exchanges for purposes of (1) order handling and execution (*e.g.,* with pegged or midpoint orders), (2) order routing, and (3) regulatory compliance, as applicable. . . . Accordingly, we ask that proposed rule changes be filed that disclose the particular market data feeds that are used for each of these purposes. Consistent with your recent discussions with Commission staff, we ask that each SRO file these proposed rule changes with the Commission by July 15, 2014.[4]

NASDAQ fully supports the Commission's efforts to provide more clarity in this area. In fact, in 2011, NASDAQ disclosed its general practices governing the use of market data in the handling, execution, and routing of orders on NASDAQ:

> The Exchange is also changing its policies and procedures under Regulation NMS governing the data feeds used by its execution system and routing engine. Current policies state that those systems use data provided by the network processors. In the future, those systems will use data provided either by the network processors or by proprietary feeds offered by certain exchanges directly to vendors. The determination of which data feed to utilize will be the same as the determination made with respect to the [MatchView] Feed. In other words, the Exchange execution system, routing engine and Feed will each utilize the same data for a given exchange. . . .[5]

Although, as described above, NASDAQ publicly disclosed its general practice of consuming data from a combination of network processor and proprietary data feeds, NASDAQ did not disclose the specific feeds NASDAQ utilizes for each individual exchange, and it did not describe its data usage practice with respect to related compliance checks.

Through this proposed rule change, NASDAQ is publicly clarifying on a market-by-market basis the specific network processor and proprietary data feeds that NASDAQ utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. These complex practices are governed by a few, simple principles that are designed to ensure that NASDAQ has the most accurate view of the trading interest available across multiple markets, and to maximize the synchronization of the many exchange functions that depend upon the calculation of an accurate NBBO and top-of-book for each market. These principles are:

1. NASDAQ uses a proprietary data feed from each exchange that provides a reliable proprietary data feed. Where no reliable proprietary data feed is available, NASDAQ uses the network processor feed;

2. Where NASDAQ uses a proprietary data feed for an exchange quote, it also maintains access to the network processor feed as a back-up in the event a specific proprietary feed become unavailable or unusable for any reason;

3. NASDAQ uses the same proprietary data feed when performing order handling, routing, and execution functions, and also when the execution and routing system performs internal compliance checks related to those functions; and

4. NASDAQ acquires and processes all proprietary and network processor feeds via the same technological

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler O'Neill & Partners L.P. Global Exchange and Brokerage Conference (June 5, 2014).

[4] *See* Letter from Steven Luparello, Director, SEC Division of Trading and Markets, to Robert Greifeld, Chief Executive Officer, NASDAQ OMX Group, Inc., dated June 20, 2014.

[5] *See* SR–NASDAQ–2011–118 (Aug. 18, 2011); 76 FR 53007 (Aug. 25, 2011).

configuration (*i.e.,* telecommunication circuitry, switches, and feed handlers) to the greatest extent possible.

5. NASDAQ calculates the National Best Bid and Offer (''NBBO'') and top-of-book for each exchange at a single point within the NASDAQ system, and then distributes that data simultaneously to numerous applications performing order handling,[6] routing, execution, and internal compliance functions throughout the NASDAQ system.

As of the date of this filing, NASDAQ utilizes the following data feeds for the handling, execution and routing of orders, as well as for performing related compliance checks:

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX)	CQS/UQDF	n/a.
B—NASDAQ OMX BX	BX ITCH 4.1	CQS/UQDF.
D—FINRA ADF	CQS/UQDF	n/a.
J—DirectEdge A	EdgeBook	CQS/UQDF.
K—DirectEdge X	EdgeBook	CQS/UQDF.
M—CSX	CQS/UQDF	n/a.
N—NYSE	NYSE OpenBook Ultra	CQS/UQDF.
P—NYSE Arca	ArcaBook Binary uncompacted	CQS/UQDF.
T/Q—NASDAQ	ITCH 4.1	CQS/UQDF.
W—CBOE	CQS/UQDF	n/a.
X—NASDAQ OMX PSX	PSX ITCH 4.1	CQS/UQDF.
Y—BATS Y-Exchange	BATS PITCH	CQS/UQDF.
Z—BATS Exchange	BATS PITCH	CQS/UQDF.

NASDAQ uses these feeds to calculate the NBBO via an application called the ''NMSFeed.'' The NMSFeed consumes the NASDAQ Protected Quote Service (''NPQS''), which provides an internal view of that exchange's own market data as NASDAQ ITCH, plus the proprietary and network processor market data feeds listed above. The NMSFeed calculates a Regulation NMS-Compliant ''Best Bid or Offer'' (''Compliant BBO''), and then delivers that information throughout the NASDAQ System, including to the ''OUCH'' order entry ports,[7] the routing system, and various compliance applications described below.

Upon receipt of an update to a protected quote for a specific venue, the NMSFeed updates its quote for that venue, recalculates the consolidated BBO based upon the update, and recalculates the Compliant BBO after applying NASDAQ's own BBO. Any quote that crosses NASDAQ's BBO is ignored. NASDAQ odd lot orders at the same price are aggregated and considered in the NBBO calculation if the sum is greater than or equal to a round lot. Otherwise, they are not considered in the NBBO calculation. Out of the remaining quotes, the most aggressive remaining bid and offer (excluding NASDAQ[8] and any destination which has been excluded from the NBBO in compliance with the self-help procedures under Regulation NMS) is selected and reported as the best quote. If away markets are crossing the market after applying NASDAQ's BBO, orders will be accepted as originally priced and have the potential to execute. Any order sent to NASDAQ that is not an Intermarket Sweep Order (''ISO'') will have the Compliant BBO check enforced by the system.[9]

The NASDAQ OMX Routing and Special Handling System (''RASH'') utilizes the Compliant BBO to determine if and when an order with special processing directives is marketable either against one or more orders in either the Core Matching System or a remote trading venue. RASH also receives market data feeds from certain venues not displaying protected quotes in the national market system for use in ''QDRK'' and ''QCST'' routing strategies set forth in NASDAQ Rule 4758(a)(1)(A)(xiii) [sic] and (xiv) [sic], respectively. RASH maintains a number of routing processes, or Routers, unique to each venue that the System accesses. These Routers maintain a limited set of details for orders that are configured as routable by the user, while also monitoring the current best bid and best offer prices on each exchange.

The NASDAQ system includes internal compliance applications related to locked and crossed markets, trade throughs, limit-up/limit-down, and Regulation SHO compliance. Each of these applications utilizes the Compliant BBO to ensure compliance with applicable regulations.

NASDAQ operates a separate real-time surveillance system that is external to the execution systems and that monitors the execution system's compliance with applicable rules and regulations. The real-time surveillance system utilizes a ''mirrored'' version of the internal NMSFeed in various realtime surveillance patterns, including (1) Lock/Cross, which detects lock/cross events across all markets, regardless of whether or not NASDAQ is a participant in the event; (2) Trade Through, which detects potential trade through events for all three NASDAQ equity markets; and (3) RegSho, which detects potential RegSho violations, alerting when a trade executes at or below the NBB at the time of order entry while the stock is in a RegSho restricted state.

In addition to the operational transparency provided above, NASDAQ is also proposing to add Rule 4759, which will provide for the public display of the proprietary and network processor feeds that NASDAQ utilizes in the order handling, routing, and

[6] With respect to order handling, the NBBO and top-of-book calculation feeds applications governing the proper processing midpoint orders, pegged orders, price-to-comply orders, and retail orders.

[7] OUCH is a protocol that allows NASDAQ participants to enter, replace and cancel orders and receive executions. In addition to OUCH, NASDAQ offers the FLITE protocol as an option for participants. In this document, references to OUCH also include FLITE because they are interchangeable for these purposes.

[8] Deletion of NASDAQ's quote at this stage of the process is necessary because otherwise the system would prevent valid executions on NASDAQ in the erroneous belief that such executions would be ''trade throughs'' in violation of Regulation NMS.

[9] In general, any order that is sent to NASDAQ with an ISO flag is not re-priced and will be processed at its original price. There are a limited number of circumstances in which an order marked as an ISO will be determined not to be executable at its original price and will be re-priced. These include re-pricing under the Plan to Address Extraordinary Market Volatility, re-pricing to comply with Regulation SHO, and the re-pricing of an order with a post-only condition if NASDAQ has an order at that price at the time the order is accepted.

execution processes described above, as well as in the compliance functions described above. NASDAQ will display this information on *www.nasdaqtrader.com,* which is heavily used by NASDAQ members and their customers.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general and with Sections 6(b)(5) of the Act,[11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by enhancing transparency through the dissemination of the most accurate quotations data and by clarifying its contents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–072. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–072 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18119 Filed 7–31–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14070 and #14071]

Nebraska Disaster #NE–00062

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4183–DR), dated 07/24/2014.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 06/14/2014 through 06/21/2014.

DATES: *Effective Date:* 07/24/2014.

Physical Loan Application Deadline Date: 09/22/2014

Economic Injury (EIDL) Loan Application Deadline Date: 04/24/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/24/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cedar, Cuming, Dakota, Dixon, Franklin, Furnas, Harlan, Kearney, Phelps, Stanton, Thurston, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14070B and for economic injury is 14071B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–18093 Filed 7–31–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14072 and #14073]

Iowa Disaster #IA–00061

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4184–DR), dated 07/24/2014.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 06/14/2014 through 06/23/2014.

Effective Date: 07/24/2014.

Physical Loan Application Deadline Date: 09/22/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 04/24/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/24/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Allamakee, Buchanan, Buena Vista, Butler, Cherokee, Chickasaw, Clay, Dickinson, Emmet, Fayette, Franklin, Hancock, Humboldt, Ida, Kossuth, Lyon Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, Winnebago, Winneshiek, Woodbury, Wright.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14072B and for economic injury is 14073B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–18091 Filed 7–31–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14066 and #14067]

Iowa Disaster #IA–00060

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Iowa dated: 07/24/2014.

Incident: Severe Storms and Flooding.

Incident Period: 06/26/2014 through 07/09/2014.

Effective Date: 07/24/2014.

Physical Loan Application Deadline Date: 09/22/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 04/24/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Linn.

Contiguous Counties:

Iowa: Benton, Buchanan, Cedar, Delaware, Iowa, Johnson, Jones.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14066B and for economic injury is 140670.

The State which received an EIDL Declaration # is Iowa.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: July 24, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–18095 Filed 7–31–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2014–0025]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 30, 2014.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2014–0025 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Jodoin, (202) 366–5465, or James Austrich, 202–366–0731, Office of Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Traffic Incident Management Responder Training Assessment

Background: Three highway injury crashes occur every minute in the United States, putting nearly 39,000 incident responders potentially in harm's way every day. Congestion from these incidents often generates secondary crashes, further increasing traveler delay and frustration, and is the source of up to 25 percent of all traffic delays. The longer incident responders remain at the scene, the greater the risk they, and the traveling public, face. Minimizing the time and resources required for incident clearance is essential to meeting Federal Highway Administration (FHWA) goals for improved safety and reliability.

The second Strategic Highway Research Program (SHRP2) an applied research program authorized by Congress in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Section 5210 (Pub. L. 109–59), and reauthorized in Moving Ahead for Progress in the 21st Century (MAP–21), Sections 52003 and 52005 (Pub. L. 112–141) address some of the most pressing needs related to the nation's highway system. Recognizing the critical safety and operations implications of incident management, SHRP2 developed the National Traffic Incident Management (TIM) Responder Training curriculum. The training curriculum, developed through SHRP2 project numbers L12 and L32A, is designed to reach as many responders as possible through in-person training. In the summer of 2012, the FHWA Office of Operations assumed lead implementation responsibility for the in-person training program, and is currently conducting ''train the trainer'' sessions throughout the U.S. The Office of Operations also plans to launch an E-Learning Tool (SHRP2 project L32B) that will significantly expand the reach of the program, reaching thousands of additional responders. When fully-deployed, the training will produce a cadre of well-trained responders in each State, able to more quickly reduce the time it takes to clear accidents, offering the benefits of reduced congestion and lost travel time for travelers, as well as improved safety conditions for incident responders and motorists.

The SHRP2 program also identified the need for comprehensive evaluation of the benefits of TIM responder training, and developed an electronic post-course assessment tool (Assessment Tool) through project L32C, to be used to gather and analyze survey information related to TIM responder training. The Assessment Tool and collected survey information will enable participating agencies to assess student learning, to identify actions that can be taken to meet agency emergency response goals, and to evaluate the sufficiency of current agency resources and equipment to meet the goals of successful TIM response. The Assessment Tool will also support the Office of Operations' management of the TIM Responder Training Program by tracking and reporting the number of trainers and trainees reached by the classroom and e-Learning activities. The tool will use a four-level ''Kirkpatrick Model'' evaluation methodology with survey data collection following both in-person and e-Learning events. Consistent with the Kirkpatrick Model, the Office of Operations intends to survey training participants, their peers, and their supervisors in four phases.

Phase 1 is a reaction survey, sent to the participants immediately after the training session is completed, either in hardcopy or electronic form.

Phase 2 is concurrent with Phase 1 but focused on student learning. The Phase 2 assessment will include survey questions and short quizzes to be answered by the participants before and shortly after the training sessions, in order to gauge student absorption and retention of the course materials. Information will be collected in hardcopy or electronic form.

Phase 3 is a behavior assessment, conducted at least two months following the completion of the training sessions. This phase is designed to assess changes in responder behavior, the relevance of those changes to improved incident response, and their sustainability over time. Information will be collected via survey of training participants, their peers, and their supervisors. Peer and supervisor feedback is essential to obtaining objective, reliable assessments of trainee behavior change. Information will be collected via electronic survey.

Phase 4 assesses organizational change resulting from the training program in the medium and long-terms. Surveys will be distributed electronically to senior management officials of trainee organizations. Initial surveys will be conducted at least three months after training sessions, with annual follow-up surveys for up to three years to gauge long-term effects of the training program.

Respondents: For *training participants:* Approximately 33,905 training participants in the first year, 36,905 in the second year, 53,905 in the third year—total of approximately 124,715 participants over a three year period. For *supervisors:* Approximately 3,390 in the first year, 3,690 in the second year, and 5,390 in the third year—total of 12,470 over three years. For *senior management:* Approximately 1,130 in the first year, 1,230 in the second year, and 1,800 in the third year—4,160 total over three years,

including annual follow-up surveys of first and second year organizations. Total estimated respondents per year: Approximately 38,425 in year one, 41,925 in year two, 61,095 in year three—grand total of 141,445 over three years.

Frequency: Annually.

Estimated Average Burden per Response: For training participants: Approximately 45 minutes per participant. For supervisors: Approximately 30 minutes per participant. For senior managers: Approximately 30 minutes per participant.

Estimated Total Annual Burden Hours: For training participants: Approximately 31,179 hours annually. For supervisors: Approximately 2078 hours annually. For senior managers: approximately 693 hours annually. Total hours annually: 33,950.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 28, 2014.

Michael Howell,

Information Collections Officer.

[FR Doc. 2014–18171 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0195]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Commercial Driver Licensing and Test Standards

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for approval and invites public comment. The FMCSA requests approval to revise and renew an ICR entitled, *''Commercial Driver Licensing and Test Standards,''* due to an increase in the number of Commercial Driver License Information System (CDLIS) driver records from 12.8 to 14.6 million and the addition of one information collection item: ''Driver completion of knowledge and skills tests [49 CFR 383.71(a)(2)(ii) and (b)(2)].'' This ICR is needed to ensure that drivers, motor carriers and the States are complying with notification and recordkeeping requirements for information related to testing, licensing, violations, convictions and disqualifications and that the information is accurate, complete and transmitted and recorded within certain time periods as required by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended.

DATES: Please send your comments by September 2, 2014. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2014–0195. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, Commercial Driver's License Division (MC–ESL), Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC, 20590–0001. Telephone: 202–366–5014; email: *robert.redmond@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Commercial Driver Licensing and Test Standards.

OMB Control Number: 2126–0011.

Type of Request: Revision of a currently-approved information collection.

Respondents: Drivers with a commercial learner's permit (CLP) or commercial driver's license (CDL) and State driver licensing agencies (SDLAs).

Estimated Number of Respondents: 11,410,100 driver respondents and 17,900,986 State respondents.

Estimated Time per Response: Drivers: 16.29 minutes per response and States: 1.86 minutes per response.

Expiration Date: August 31, 2014.

Frequency of Response: Variable.

Estimated Total Annual Burden: 3,651,867 hours.

The information collection is comprised of twelve components:

(1) *State Recording of Medical Examiner's Certificate Information:* Approximately 69% of the 2.96 million interstate CDL holders would renew their medical certification every 2 years. Approximately 31% of the 2.96 million interstate CDL holders would renew their medical certification every year as a condition of a medical variance (i.e., an exemption, Skill Performance Evaluation (SPE) certificate or pilot program) or their employer requires another examination. It takes approximately 2 minutes to record the medical examiner's certificate information on the CDLIS driver record.

FMCSA estimates that there are 657,000 new drivers (5% of the current total of 13.14 million active CDL driver records) who would obtain a CDL every year and that 74% of these new 657,000 CDL holders, or 486,180 new CDL holders would be engaged in interstate commerce.

The number of existing CDL holders who would need to renew and submit a copy of their medical examiner's certificate to the State would be 2.96 million CDL holders engaged in interstate commerce. Since 31% of the 2.96 million interstate CDL holders would need to submit a copy of their medical examiner's certificate to the State every year as a condition of their medical variance or their new employer requires another examination, the total number of renewal submittals (responses) for a 2-year cycle would be 3.88 million (2.96 million × 1.31 = 3.88 million). The annual submittal of medical examiner's certificates to the State would be 2.43 million annual responses (3.88 million/2 years + 486,180 new drivers = 2.43 million).

FMCSA estimates a total of 81,000 annual burden hours (2.43 million responses × 2/60 hours = 81,000) for the States to obtain and record the medical examiner's certificate information on the CDLIS driver record.

(2) State Recording of the Self Certification of Commercial Motor Vehicle (CMV) Operation: All CDL

holders would need to have their self-certification of CMV operation information recorded on their CDLIS driver record as either ''non-excepted interstate,'' ''excepted interstate,'' ''non-excepted intrastate'' or ''excepted intrastate.'' Only CDL holders subject to part 391 (non-excepted, interstate drivers) would be required to submit a medical examiner's certificate to the SDLA.

CDLs are renewed on average every 5 years. It takes approximately 5 seconds (.083 minutes) for the SDLA to record the medical certification status information on the CDLIS driver record.

FMCSA estimates the annual SDLA recording of self- certification of CMV operation information would be 3,285,000 million annual responses (13.14 million/5 years + 657,000 million new CDL drivers = 3,285,000).

FMCSA estimates the SDLA recording of self-certification of CMV operation information at a total annual burden of 4,544 hours (3,285,000 million responses × .083/60 hours = 4,544 hours).

(3) *State Verification of Medical Certification Status:* Only the medical certification status information of CDL holders subject to part 391 must be verified because they are the only drivers required to be medically certified.

Approximately 2% of active CDLIS driver records are transferred to another State each year.

It takes approximately 5 seconds (.083 minutes) to verify the medical certification status information of a CDL driver who operates a CMV in interstate commerce.

FMCSA estimates that the SDLA's annual verification of medical certification status information would generate 651,200 annual responses [(2,960,000 renewals/5 years) + (.02 × 2,960,000 transfers per year) = 651,200).

FMCSA estimates a total annual burden of 901hours (651,200 × .083/60 hours = 901) for SDLAs to verify the medical certification status information of all interstate CDL drivers.

(4) *Driver Notification of Convictions/ Disqualifications to Employer:* There are approximately 13.14 million active commercial driver's license (CDL) driver records. Each driver averages 1 conviction every 3 years. The estimated number of annual responses is 4,380,000 (13.14 million CDL drivers/3 = 4.380,000). It takes approximately 10 minutes to notify a motor carrier concerning convictions and disqualifications. The notification requirement has an estimated annual burden of 730,000 burden hours (4,380,000 convictions/disqualifications × 10/60 hours = 730,000 hours);

(5) *Driver Providing Previous Employment History to New Employer:* The estimated annual turnover rate of drivers is approximately 14 percent (%) based on industry estimates. There are an estimated 1,839,800 annual responses to this requirement (13.14 million CDL holders × .14 annual turnover rate = 1,839,800). It takes approximately 15 minutes to complete this requirement. The employment history requirement has an estimated annual burden of 459,950 burden hours (1,839,800 annual responses × 15/60 hours = 459,950 hours);

(6) *Annual State Certification of Compliance:* There are 51 responses (50 States and the District of Columbia) to this requirement and it takes approximately 32 hours to complete compliance documents. The compliance certification requirement has an estimated annual burden of 1,632 burden hours (51 responses × 32 hours = 1,632 hours);

(7) *State Preparing For and Participating in Annual Program Review:* A State CDL program review is conducted every year. There are 51 responses (50 States and the District of Columbia) to this requirement. It takes approximately 40 hours to complete each response with a staff of 5 persons. The State annual program review requirement has an estimated annual burden of 10,200 burden hours (51 States × 40 hours × 5 staff = 10,200 hours).

(8) *CDLIS/PDPS/State Recordkeeping:* Fifty (50) States and the District of Columbia are required to enter data into the commercial driver's license information system (CDLIS) about operators of CMVs and to perform record checks before issuing, renewing, upgrading or transferring a CDL.

There are approximately 657,000 new drivers a year (13.14 million drivers × .05 = 657,000 new drivers). FMCSA estimates that the average amount of time for each record inquiry performed by a State to add a new driver is 2 minutes. The new driver requirement has an estimated annual burden of 27,900 burden hours (657,000 new drivers × 2/60 = 27,900 hours).

The average renewal period is 5 years. There are approximately 2,628,000 CDLs renewed each year (13.14 million drivers/5 years = 2,628,000). FMCSA estimates that the average amount of time for each record inquiry performed by a State to renew a license is 2 minutes. The renewal record inquiry requirement has an estimated annual burden of 87,600 burden hours (2,628,000 × 2/60 hours = 87,600 hours).

Approximately 2 percent of drivers transfer to a new state each year. There are 262,800 drivers a year who change their State of domicile (13.14 million drivers × .02 = 282,800 drivers). FMCSA estimate that the average amount of time for each record inquiry performed by a State to change a driver's State of domicile is 2 minutes. The driver transfer requirement has an estimated annual burden of 8,760 burden hours (262,800 transferred drivers × 2/60 hours = 8,760 hours).

Each driver averages approximately 1 conviction every three years and approximately 25 percent of the convictions result in a disqualification. There are 5,475,000 driver convictions and disqualifications (13.14 million/3 convictions × 1.25 = 5,475,000). We estimate that the average amount of time for each transaction performed by a State is 2 minutes. The driver conviction/disqualification transaction requirement has an estimated annual burden of 182,500 burden hours (5,475,000 transactions × 2/60 hours = 182,500 hours).

Approximately 33 percent of active CDL drivers have a hazardous materials endorsement. The average renewal period is approximately 5 years. There are 867,240 drivers a year renewing a CDL with a hazardous materials endorsement (13.14 million drivers × .33/5 years = 867,240 drivers). The Agency estimates that the average amount of time for each citizenship/ resident alien status inquiry performed by a State is 2 minutes. The citizenship/ resident alien status inquiry transaction requirement has an estimated annual burden of 28,908 burden hours (867,240 drivers × 2/60 hours = 28,908 hours).

The total annual burden hours for these combined collection of information activities is 335,668 burden hours (27,900 hours + 87,600 hours + 8,760 hours + 182,500 hours + 28,908 hours = 335,668 hours).

(9) *Driver Completion of the CDL Application Form:* There are approximately 657,000 new CDL applicants a year (13.14 million × .05 = 657,000). It takes approximately 1 minute to complete the CDL part of application form. The new applicant CDL application requirement has an estimated annual burden of 10,950 burden hours (657,000 applications × 1/60 hours = 10,950 hours).

The average CDL renewal period is approximately 5 years. Therefore, 2,628,000 drivers renew their CDL a year (13.14 million drivers/5 years = 2,628,000 drivers). It takes approximately 1 minute for renewal drivers to complete the CDL part of the application form. The renewal driver

CDL application form requirement has an estimated annual burden of 43,800 burden hours (2,628,000 × 1/60 hours = 43,800 hours).

Approximately 2 percent of drivers transfer to a new State each year. FMCSA estimates that there are 262,800 transfer drivers (13.14 million × .02 = 262,800). It takes approximately 1 minute for transfer drivers to complete the CDL part of the application form. The transfer driver CDL application form requirement has an estimated annual burden of 4,380 hours (262,800 × 1/60 = 4,380).

The total annual burden hours for these combined collection of information activities is 59,130 hours (10,950 hours + 43,800 hours + 4,380 = 59,130 hours).

(10) *Driver Completion of Knowledge and Skills Tests:* FMCSA estimates that there are 657,000 new drivers (5% of the current total of 13.14 million active CDL driver records) who would obtain a CDL every year.

Approximately 25 percent of the applicants fail the CDL knowledge and skills tests the first time they take the tests.

FMCSA estimates that a knowledge test on average takes 45 minutes to complete and a skills test on average takes 90 minutes to complete.

The Agency estimates there are 821,250 knowledge tests completed every year (657,000 × 1.25 = 821,250).

The Agency estimates the annual burden for taking the knowledge test is 615,938 burden hours (821,250 × 45/60 hour/test = 615,938).

The Agency estimates there are 821,250 skills tests completed every year (657,000 × 1.25 = 821,250).

The Agency estimates the annual burden for taking the skills tests is 1,231,875 hours (821,250 × 90/60 hour/test = 1,231,875).

The total annual burden hours for these combined collection of information activities is 1,847,813 burden hours (615,938 hours + 1,231,875 hours = 1,847,813 hours).

(11) *Knowledge and Skills Test Recordkeeping:* There are approximately 657,000 new CDL applicants a year (13.14 million × .05 = 657,000). It takes approximately 2 minutes to record the results of knowledge tests and 5 minutes for the skills tests. Approximately 25 percent of the applicants fail the knowledge and skills tests the first time they take the tests.

The knowledge test recordkeeping requirement has an estimated annual burden of 27,375 burden hours (657,000 applicants × 2/60 hours × 1.25 = 27,375 hours).

The skills test recordkeeping requirement has an estimated annual burden of 68,438 hours (657,000 applicants × 5/60 hours × 1.25 = 68,438).

The total annual burden hours are 95,813 burden hours for these combined activities (27,375 + 68,438 = 95,813).

(12) *Knowledge and Skills Test Examiner Certification:* Based on data from the American Association of Motor Vehicle Administrator, FMCSA estimates that there are 2,144 examiners who administer CDL tests.

Based on a sampling of several SDLAs, approximately 25 percent of the examiners will only administer the knowledge test.

Based on Federal employee experience in developing training courses, it is estimated that the initial combined knowledge and skills test examiner training will take 40 hours to complete and that the initial knowledge-test-only examiner training will take 20 hours to complete. States will spread the initial training over the 3 year implementation period.

Based on Federal employee observation of SDLA licensing activities, a criminal background check on an examiner will take approximately 15 minutes to process and evaluate the results and the average amount of time to record results of examiner training, certification and criminal background checks is approximately 2 minutes.

FMCSA estimates the annual burden for examiners to complete the initial combined knowledge and skills test training and certification is 21,440 burden hours ([.75 × 2,144 examiners/3 years] × 40 hours = 21,440) and that the annual burden for examiners to complete the initial knowledge-test-only training and certification is 3,573 burden hours ([.25 × 2,144 examiners/3 years] × 20 hours = 3,573). The total annual burden for initial examiner training is 25,013 burden hours (21,440 + 3,573 = 25,013).

FMCSA estimates the annual burden for States to process and evaluate criminal background checks is 179 burden hours ([2,144 examiners/3 years] × 15/60 hours = 179).

FMCSA estimates the annual burden for States to record results of examiner training, certification and criminal background checks is 24 burden hours ([2,144 examiners/3 years] × 2/60 hours = 24).

The total annual burden hours for these combined collection of information activities is 25,216 burden hours (25,013 hours + 179 hours + 24 hours = 25,216 hours).

Background: The licensed drivers in the United States deserve reasonable assurance that their fellow motorists are properly qualified to drive the vehicles they operate. Before the Commercial Motor Vehicle Safety Act of 1986 (CMVSA or the Act) Public Law 99–570, Title XII, 100 Stat. 3207, codified at 49 U.S.C. chapter 313) was signed by the President on October 27, 1986, 18 States and the District of Columbia authorized any person licensed to drive an automobile to also legally drive a large truck or bus. No special training or special license was required to drive these vehicles, even though it was widely recognized that operation of certain types of vehicles called for special skills, knowledge and training. Even in the 32 States that had a classified driver licensing system in place, only 12 of these States required an applicant to take a skills test in a representative vehicle. Equally serious was the problem of drivers possessing multiple driver licenses that enabled these commercial motor vehicle (CMV) drivers to avoid license suspension for traffic law convictions. By spreading their convictions among several States, CMV drivers could avoid punishment for their infringements, and stay behind the wheel.

The CMVSA addressed these problems. Section 12002 of the Act makes it illegal for a CMV operator to have more than one driver's license. Section 12003 requires the CMV driver conducting operations in commerce to notify both the designated State of licensure official and the driver's employer of any convictions of State or local laws relating to traffic control (except parking tickets). This section also required the promulgation of regulations to ensure each person who applies for employment as a CMV operator to notify prospective employers of all previous employment as a CMV operator for at least the previous ten years.

In section 12005 of the Act, the Secretary of Transportation (Secretary) is required to develop minimum Federal standards for testing and licensing of operators of CMVs.

Section 12007 of the Act also directs the Secretary, in cooperation with the States, to develop a clearinghouse to aid the States in implementing the one driver, one license, and one driving record requirement. This clearinghouse is known as the Commercial Driver's License Information System (CDLIS).

The CMVSA further requires each person who has a CDL suspended, revoked or canceled by a State, or who is disqualified from operating a CMV for any period, to notify his or her employer of such actions. Drivers of CMVs must notify their employers within 1 business

day of being notified of the license suspension, revocation, and cancellation, or of the lost right to operate or disqualification. These requirements are reflected in 49 CFR part 383, titled ''*Commercial Driver's License Standards; Requirements and Penalties.*''

Specifically, section 383.21 prohibits a person from having more than one license; section 383.31 requires notification of convictions for driver violations; section 383.33 requires notification of driver's license suspensions; section 383.35 requires notification of previous employment; and section 383.37 outlines employer responsibilities. Section 383.111 requires the passing of a knowledge test by the driver and section 383.113 requires the passing of a skills test by the driver; section 383.115 contains the requirement for the double/triple trailer endorsement, section 383.117 contains the requirement for the passenger endorsement, section 383.119 contains the requirement for the tank vehicle endorsement and section 383.121 contains the requirement for the hazardous materials endorsement.

Section 12011 of the CMVSA states that the Secretary shall withhold a portion of the Federal-aid highway funds apportioned to a State if the State does not substantially comply with the requirements in section 12009(a) of the Act. The information gathered during State compliance reviews is used to determine whether States are complying with these requirements.

A final rule was published on July 31, 2002 (67 FR 49742) implementing 15 of the 16 CDL related provisions of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748 (Dec. 9, 1999)) that were designed to enhance the safety of drivers on our nation's highways by ensuring that only safe drivers operate CMVs. These new requirements are contained in 49 CFR part 383 and include: Five new major and serious disqualifying offenses (section 383.51): Non-CMV disqualifying offenses by a CDL holder (section 383.51); disqualification of drivers determined to be an imminent hazard (section 383.52); a new school bus endorsement (section 383.123); a prohibition on issuing a hardship license to operate a CMV while under suspension (section 384.210); a prohibition on masking convictions (section 384.226); and various requirements for transmitting, posting and retaining driver convictions and disqualification records.

A Final Rule was published on December 1, 2008 (73 FR 73096) that implemented the 16th CDL related provision of MCSIA, the merging of the medical certification and CDL issuing processes.

An interim final rule (IFR) was published on May 5, 2003 (68 FR 23844) as a companion rule to the Transportation Security Administration's (TSA's) May 5, 2003 IFR implementing section 1012 of the USA PATRIOT Act (Pub. L. 107–56) on security threat assessments for drivers applying for or renewing a CDL with a hazardous materials endorsement. While TSA set the requirements in their rule; FMCSA has the responsibility as part of the CDL testing and issuance process to ensure that States are in compliance with the TSA requirements.

Section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, June 9, 1998, requires the Secretary of Transportation to review the procedures established and implemented by the States under 49 U.S.C. 31305 for CDL knowledge and skills testing to determine whether the current testing system is an accurate measure and reflection of an individual's knowledge and skills to operate a CMV. The results of this review were incorporated into the new ''2005 CDL Test System.'' A final rule was published on May 9, 2011 (76 FR 26854) (Attachment J) that requires the use of a State Testing System that is comparable to the 2005 CDL Test System.

Section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA–LU), Public Law 109–59, August 10, 2005, requires the Department of Transportation (DOT) to prescribe regulations on minimum uniform standards for the issuance of commercial learner's permits (CLPs), as it has already done for CDLs [49 U.S.C. 31308]. More specifically, section 4122 provides that an applicant for a CLP must first pass a knowledge test which complies with minimum standards prescribed by the Secretary and may have only one CLP at a time (49 U.S.C. sec. 31302); that the CLP document must have the same information and security features as the CDL; and that the data on each CLP holder must be added to the driver's record in CDLIS. The Final Rule published on May 9, 2011 also includes each of those requirements.

Section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, October 13, 2006, requires the Secretary of Transportation to promulgate regulations implementing the recommendations in a memorandum issued by the DOT's Office of the Inspector General (OIG) on June 4, 2004, concerning verification of the legal status of commercial drivers, as well as the recommendations in a report issued by the OIG on February 7, 2006 ''[Oversight of the Commercial Driver's License Program]'' dealing with steps needed to improve anti-fraud measures in the CDL program. The specific recommendations include: The establishment of a legal presence requirement for CDL issuance; declaring a State out of substantial compliance with the CDL requirements if the State fails to impose adequate internal controls to detect and help prevent fraud in the CDL program or fails to take adequate corrective action when fraud is discovered; and imposed sanctions against States for noncompliance. This Final Rule published on May 9, 2011 includes all of the OIG's recommendations. Many of the operational procedures suggested by the OIG for carrying out the recommendations have also been adopted.

This information collection supports the DOT Strategic Goal of Safety by requiring that drivers of CMVs are properly licensed according to all applicable Federal requirements.

The 10-year employment history information supplied by the CDL holder to the employer upon application for employment (49 CFR 383.35) is used to assist the employer in meeting his/her responsibilities to ensure that the applicant does not have a history of high safety risk behavior.

State officials use the information collected on the license application form (49 CFR 383.71), the medical certificate information that is posted to the driving record (proposed) and the conviction and disqualification data posted to the driving record (49 CFR 383.73) to prevent unqualified and/or disqualified CDL holders from operating CMVs on the nation's highways. State officials are also required to administer knowledge and skills tests to CDL driver applicants (49 CFR 384.202). The driver applicant is required to correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on that test. To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in the regulations. During State CDL compliance reviews, FMCSA officials review this information to ensure that the provisions of the regulations are being carried out. Without the aforementioned requirements, there would be no uniform control over driver licensing practices to prevent unqualified and/or

disqualified drivers from being issued a CDL and to prevent unsafe drivers from spreading their convictions among several licenses in several States and remaining behind the wheel of a CMV. Failure to collect this information would render the regulations unenforceable.

Information submitted by the States will be used by the FMCSA to determine if individual States are in ''substantial compliance'' with section 12009(a) of the CMVSA (sec. 12011(a)). The FMCSA reviews information submitted by the States and conducts such reviews, audits, and investigations of each State once every three years or as it deems necessary to make compliance determinations for all States and the District of Columbia. If this information were not available, the FMCSA would have no means of independently verifying State compliance.

This request for renewed approval includes one additional information collection item: ''Driver completion of knowledge and skills tests [49 CFR 383.71(a)(2)(ii) and (b)(2)].''

Public Comments: On May 22, 2014, FMCSA published a notice in the **Federal Register** to announce this proposed ICR and request comment from the public on it for 60 days (79 FR 29480). One comment was received in response to this notice and has been placed in the public docket. The commenter is anonymous. The full comment and responsive consideration is as follows:

The anonymous commenter stated: ''The ICR indicates that there are 2.96 million drivers of interstate CMVs. On what basis? BLS puts the number of drivers of heavy trucks at about 1.6 m, not all of whom are in interstate commerce. Even if one adds the self-employed (BLS puts that at less than 150,000) and bus drivers, one would be hard pressed to reach 3 million interstate drivers. Turnover in long-haul truckload is high, but not almost a half million per year as estimated. Does the Agency have any basis for these numbers? The number of drivers holding a CDL is irrelevant, as the ICR admits. A driver is not subject to the rule unless he or she is driving a CMV in interstate commerce. A CDL holder is not required to notify anyone of convictions if he or she is not driving a CMV so using 13 million as the baseline is just silly as it is for the next item (providing information to the new employer).

The burden is vastly overstated.''

The FMCSA in response disagrees with the anonymous commenter. The BLS underestimates the number of drivers who are operating trucks and require a CDL. The BLS only counts persons who declare their profession as a truck driver. There are many other persons who work for utility companies and other employers who consider themselves professional electricians, plumbers, construction workers, etc. who operate commercial motor vehicles that require them to hold a CDL. In addition, drivers of motorcoaches, transit buses and school buses are required to have a CDL if the vehicle is designed to transport 16 or more passengers, including the driver.

In regard to using a little over 13 million as the number of active CDL and commercial learners permit (CLP) holders, this is supported by the number of driver records that are on the Commercial Driver's License Information System minus an estimate of the number of driver records of persons permanently disqualified, voluntarily surrendered their CDL or are recorded deceased, but must remain in the data base because they contain driver convictions that must be retained on the record for a set period of time. These 13 million active CDL and CLP holders represent both interstate and intrastate drivers, whether they are currently employed or not employed. There are certain requires to hold a CDL or CLP whether or not the person is currently employed as a driver. This includes the reporting of all moving violations in any motor vehicle to either their employer or if not currently employed to their State of licensure. Also, there is a high turnover of employed drivers, either seeking new employment or coming in and out of the trucking industry.

Definitions: Under 49 CFR 383.5:

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of hazardous materials as defined in this section.

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: July 28, 2014.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2014–18170 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FR A–2014–0059]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated February 24, 2014, Norfolk Southern Corporation (NS) and the Indiana and Ohio Railway (IORY) have jointly petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2014–0059.

Applicants:

Norfolk Southern Corporation, Mr. Brian L. Sykes Chief Engineer–C&S Engineering 1200 Peachtree Street NE., Atlanta, GA 30309.

Indiana and Ohio Railway Mr. Charles McBride Senior Vice President Ohio Valley Region 2856 Cypress Way Cincinnati, OH 45212.

NS and IORY seek approval of the proposed discontinuance of a traffic control system (TCS) in Cincinnati, OH, on the IORY Oasis Subdivision, IORY

Midland Subdivision, NS New Castle District, NS Cincinnati District, and the following tracks connecting these lines:

• NS Cincinnati District from Red Bank, Milepost (MP) CV 111.9, to Clare, MP CV 110.7; NS Connecting Track from Red Bank, MP CV 111.9, to Valley, MP CF 7.5; IORY Oasis Subdivision from Valley, MP CF 7.5, to Mill, MP CF 16.4; NS New Castle District from Mill, MP CF 16.4 to Vaughn, MP CF 17.2; NS Connecting Track from Mill, MP CF 16.4, to Control Point (CP) 248, MP CJ 248.4; IORY Connecting Track, from Oakley, MP CF 10.1, to East Norwood, MP 10.9; IORY Connecting Track, from Ridge, MP CF 10.6, to Penn, MP C 10.3; IORY Midland Sub, from East Norwood, MP 10.9, to NA Tower, MP 7.5.

The reason for the proposed changes is a TCS is no longer desirable to handle current train operations. The movement of through freight trains has been mostly eliminated from these lines for several years and, today, consists of a few local shifter movements per day.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 15, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on July 17, 2014.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2014–18213 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0048]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a letter dated May 14, 2014, Union Pacific Railroad (UP), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment, End-of-Train Devices; 49 CFR part 229, Railroad Locomotive Safety Standards; and 49 CFR part 215, Railroad Freight Car Safety Standards; for locomotives and freight cars received in interchange at El Paso, TX, from the Ferrocarriles Nacionales de Mexico (FXE). FRA assigned the petition Docket Number FRA–2014–0048.

Specifically, UP seeks relief from 49 CFR sections 232.205—*Class I brake test-initial terminal inspection,* 229.21—*Daily inspection,* and Part 215—Freight Car Standards, to permit movement from the FXE interchange point at International Yard on the Lordsburg Subdivision to UP's Dallas Street Yard for westbound traffic, a distance of 2.8 miles; and to the UP Alfalfa Yard for eastbound traffic, a distance of 7 miles without complying with the requirements of the above noted regulations. UP currently receives three trains traveling north from Mexico (two auto trains and one manifest train with intermodal cars) and delivers three trains south to Mexico (two manifest trains and one auto train) on a daily basis through the El Paso, TX, River International Yard. Recently, there have been reports of gunfire heard across the border. These reported gunshots are within close proximity to UP employees and contractors. Moreover, many Federal employees, including U.S. Customs and Border Protection agents, U.S. Department of Agriculture Inspecting agents, and FRA inspectors work in the area as well. UP stated that the requested waiver will have no adverse effect on the safety of operations and will greatly reduce risks associated with these operations. UP further stated that FRA granted agreements allowing trains to be moved several miles without Class 1 air brake tests at other cross-border gateways with similar risks.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 2, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on July 17, 2014.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2014–18212 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–6072]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated May 20, 2014, Lake Superior Railroad Museum (LSRM) petitioned the Federal Railroad Administration (FRA) for renewal of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223, Safety Glazing Standards—Locomotives, Passenger Cars, and Cabooses. FRA assigned the petition Docket Number FRA–1999–6072.

LSRM seeks an extension of relief from the Safety Glazing Standards for operation of former Great Northern Railway Diesel Locomotive Number 192, built by General Motors in 1946. LSRM seeks to operate this locomotive in excursion service with other antique rolling stock over 26 miles of the North Shore Scenic Railroad and 1,500 feet of Canadian National Railway (former Duluth, Missabe and Iron Range) track between Duluth and Two Harbors, MN. As described in the previous waiver approval, the locomotive is equipped with a mix of FRA Type I and II glazing and other glazing identified as ''shatterproof.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 15, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on July 28, 2014.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2014–18211 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0066]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated May 28, 2014, Union Pacific Railroad (UP) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229. FRA assigned the petition Docket Number FRA–2014–0066.

UP seeks a waiver of the requirement in 49 CFR 229.29(b) which requires that the air flow method (AFM) indicator on a locomotive be calibrated in accordance with 49 CFR 232.205(c)(1)(iii) at intervals not to exceed 92 days. UP states that calibration of the AFM indicator requires them to take locomotives out of service every 92 days and into a facility where the calibration can be performed, even though the locomotive may otherwise be eligible for 184-day periodic inspections. UP further states that the AFM indicator is used only to conduct AFM brake tests, and that the same air brake tests may be performed by the leakage test method, which does not use the AFM indicator. If the waiver is granted for locomotives with past due AFM indicator calibration, UP plans to inform the crew of the exceeded interval and require that air brake tests be done in accordance with the leakage test method of 49 CFR 232.205(c)(1)(i), with no resulting adverse impact on the safety of operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 15, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on July 28, 2014.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2014–18216 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Safety Advisory 14–3]

Vintage/Heritage Trolley Vehicle B and K Operating Controllers

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of safety advisory.

SUMMARY: Today the Federal Transit Administration (FTA) is issuing Safety Advisory 14–3 advising rail transit agencies that operate reconditioned vintage/heritage trolley vehicles manufactured prior to January 1, 1956, of an operating concern regarding B and K high voltage operating controllers. This safety advisory recommends specific and immediate action for rail transit agencies not overseen by the Federal Railroad Administration (FRA), and provides supporting technical resources.

The FTA's Safety Advisory 14–3, ''Vintage/Heritage Trolley Vehicle B and K Operating Controllers,'' is available in its entirety on the agency's public Web site (*http://www.fta.dot.gov/tso_15922.html*).

FOR FURTHER INFORMATION CONTACT: For program matters, Thomas Littleton, Associate Administrator for Transit Safety and Oversight, telephone (202) 366–1783 or *Thomas.Littleton@dot.gov.* For legal matters, Scott Biehl, Senior Counsel, telephone (202) 366–0826 or *Scott.Biehl@dot.gov.*

SUPPLEMENTARY INFORMATION: Vintage/heritage trolley vehicles and their components may not meet modern engineering and safety standards, also present unique operational and maintenance challenges.

Action Required: Recent vehicle fires involving B and K high voltage operating controllers represent a safety concern. As such, the FTA is instructing rail transit agencies operating vintage/heritage trolley vehicles to inspect B and K high voltage operating controllers for signs of heat damage, evidence of fire, arcing and flashovers. Agencies should take appropriate corrective actions if evidence of these conditions is discovered. Additionally, please notify Ms. Kimberly Burtch in the FTA Office of System Safety at (202) 366–0816 if any evidence of heat damage, fire, arcing and flashovers is discovered in the inspection process. The FTA's issuance of Safety Advisory 14–3 is in accordance with the Federal Transit Administrator's authority to ''investigate public transportation accidents and incidents and provide guidance to recipients regarding prevention of accident and incidents.'' 49 U.S.C. 5329(f)(5).

Issued in Washington, DC, this 28th day of July, 2014.

Therese W. McMillan,

Deputy Administrator, Federal Transit Administration.

[FR Doc. 2014–18149 Filed 7–31–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 29, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 2, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Office of Foreign Assets Control

OMB Number: 1505–0167.

Type of Review: Extension of a currently approved collection.

Title: Cuban Remittance Affidavit.

Form: TD F 90–22.52.

Abstract: The information on form TD F 90–22.52 is required of persons subject to the jurisdiction of the United States who make remittances to persons in Cuba pursuant to the general licenses in section 515.570 of the Cuban Assets Control Regulations, 31 CFR part 515 (''CACR''). The information will be used by Treasury's Office of Foreign Assets Control (OFAC) to monitor compliance with regulations governing unlimited family and family inherited remittances, periodic $500 remittances, unlimited remittances to religious organizations, remittances to students in Cuba pursuant to an educational license, limited emigration remittances, and periodic remittances from blocked accounts.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 100,000.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–18136 Filed 7–31–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of 17 individuals and six entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 17 individuals and six entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on July 23, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On July 23, 2014, the Director of OFAC designated the following 17 individuals and six entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. ALVAREZ PINEDA, Rafael (a.k.a. ''CHEPE''); DOB 27 Mar 1975; POB Yacopi, Cundinamarca, Colombia; citizen Colombia; Cedula No. 98649747 (Colombia) (individual) [SDNTK].
2. ANAYA MARTINEZ, Cesar Daniel (a.k.a. ''TIERRA''); DOB 30 Apr 1981; POB Tierralta, Cordoba, Colombia; citizen Colombia; Cedula No. 78768807 (Colombia) (individual) [SDNTK].
3. DURANGO RESTREPO, Jairo de Jesus (a.k.a. ''GUAGUA''); DOB 30 Jun 1972; POB Frontino, Antioquia, Colombia; citizen Colombia; Cedula No. 3484676 (Colombia) (individual) [SDNTK] (Linked To: COMERCIALIZADORA J DURANGO).
4. GOMEZ ALVAREZ, Sor Teresa (a.k.a. ''LA NEGRA''); DOB 27 Jun 1956; POB Amalfi, Antioquia, Colombia; Cedula No. 21446537 (Colombia); Passport 21446537 (Colombia) (individual) [SDNTK] (Linked To: FUNDACION PARA LA PAZ DE CORDOBA).
5. GUTIERREZ RENDON, Orlando (a.k.a. ''NEGRO ORLANDO''); DOB 12 Jan 1966; POB Buenaventura, Valle, Colombia; citizen Colombia; Cedula No. 16486550 (Colombia) (individual) [SDNTK].
6. LOPEZ LONDONO, Henry de Jesus (a.k.a. ''MI SANGRE''); DOB 15 Feb 1971; POB Medellin, Antioquia, Colombia; citizen Colombia; Cedula No. 71721132 (Colombia) (individual) [SDNTK] (Linked To: H Y J COMERCIALIZADORA INTERNACIONAL LTDA).
7. MESA PAEZ, Aristides Manuel (a.k.a. ''EL INDIO''); DOB 25 Apr 1970; POB San Pedro de Uraba, Antioquia, Colombia; citizen Colombia; Cedula No. 71978727 (Colombia) (individual) [SDNTK].
8. MONTOYA USUGA, Alexander (a.k.a. ''FLACO USUGA''); DOB 14 Jun 1979; POB Medellin, Antioquia, Colombia; citizen Colombia; Cedula No. 71216560 (Colombia) (individual) [SDNTK].
9. MORENO TUBERQUIA, Carlos Antonio (a.k.a. ''NICOLAS''); DOB 30 Apr 1977; POB Monteria, Cordoba, Colombia; citizen Colombia; Cedula No. 11002975 (Colombia) (individual) [SDNTK].
10. PADIERNA PENA, Luis Orlando (a.k.a. ''INGLATERRA''); DOB 26 Jan 1979; POB Carepa, Antioquia, Colombia; citizen Colombia; Cedula No. 15441176 (Colombia) (individual) [SDNTK].
11. PALENCIA GONZALEZ, Cipriam Manuel (a.k.a. ''VISAJE''); DOB 18 Apr 1979; POB Valencia, Cordoba, Colombia; citizen Colombia; Cedula No. 10903608 (Colombia) (individual) [SDNTK].
12. ROBAYO ESCOBAR, Carlos Jose (a.k.a. ''GUACAMAYO''); DOB 01 Jan 1969; POB Palmira, Valle, Colombia; citizen Colombia; Cedula No. 16367106 (Colombia) (individual) [SDNTK].
13. URDINOLA ALVAREZ, Hector Mario (a.k.a. ''CHICHO''); DOB 26 Aug 1982; POB Cali, Valle, Colombia; citizen Colombia; Cedula No. 16844641 (Colombia) (individual) [SDNTK] (Linked To: JOYERIA MANUELLA H.M.).
14. USUGA TORRES, Arley (a.k.a. ''07''; a.k.a. ''CERO SIETE''); DOB 14 Aug 1979; POB Tierralta, Cordoba, Colombia; citizen Colombia; Cedula No. 71255292 (Colombia) (individual) [SDNTK].
15. VARON CADENA, Greilyn Fernando (a.k.a. ''MARTIN BALA''); DOB 02 Mar 1982; POB Cali, Valle, Colombia; citizen Colombia; Cedula No. 16943202 (Colombia) (individual) [SDNTK] (Linked To: INMOBILIARIA FER CADENA).
16. VARON CADENA, Ingrid Edith, Spain; DOB 21 Sep 1976; POB Cali, Valle, Colombia; citizen Colombia; Cedula No. 31479317 (Colombia) (individual) [SDNTK] (Linked To: LITOGRAFIA VARON).
17. VARON CADENA, Maribel, Spain; DOB 27 Dec 1977; POB Cali, Valle, Colombia; citizen Colombia; Cedula No. 31480963 (Colombia) (individual) [SDNTK] (Linked To: VARIEDADES BRITNEY).

Entities

1. COMERCIALIZADORA J DURANGO, Calle 51 #47C–02 BRR Centro, San Pedro de Uraba, Antioquia, Colombia; Matricula Mercantil No 57622 (Uraba) [SDNTK].
2. H Y J COMERCIALIZADORA INTERNACIONAL LTDA, Carrera 15 No. 119–32, Bogota, Colombia; NIT # 830106350–0 (Colombia); Matricula Mercantil No 01200175 (Bogota) [SDNTK].
3. INMOBILIARIA FER CADENA, Diagonal 23 #11–07 P.2, Cali, Valle, Colombia; Matricula Mercantil No 754962–2 (Cali) [SDNTK].
4. JOYERIA MANUELLA H.M., Carrera 50 #9B–20, Cali, Valle, Colombia; Matricula Mercantil No 818178–2 (Cali) [SDNTK].
5. LITOGRAFIA VARON, Carrera 34 #35–51, Cali, Valle, Colombia; Matricula Mercantil No 566466–2 (Cali) [SDNTK].
6. VARIEDADES BRITNEY, Carrera 24A #3–58, Cali, Valle, Colombia; Matricula Mercantil No 606223–2 (Cali) [SDNTK].

Dated: July 23, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–18215 Filed 7–31–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure(s)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to waiver of 60-month bar on reconsolidation after disaffiliation and procedure to eliminate impediments to e-filing consolidated returns and reduce reporting requirements.

DATES: Written comments should be received on or before September 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2002–32, Waiver of 60-Month Bar on Reconsolidation after Disaffiliation; Revenue Procedure 2006–21, to Eliminate Impediments to E-Filing Consolidated Returns and Reduce Reporting Requirements.

OMB Number: 1545–1784.

Revenue Procedure Numbers: 2002–32 and 2006–21.

Abstract: Revenue Procedure 2002–32 provides qualifying taxpayers with a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code barring corporations from filing consolidated returns as a member of a group of which it had been a member for 60 months following the year of disaffiliation; Revenue Procedure 2006–21 modifies Rev. Proc. 89–56, 1989–2 C.B. 643, Rev. Proc. 90–39, 1990–2 C.B. 365, and Rev. Proc. 2002–32, 2002–20 IRB p. 959, to eliminate impediments to the electronic filing of Federal income tax returns (e-filing) and to reduce the reporting requirements in each of these revenue procedures.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated number of respondents: 20.

The estimated annual burden per respondent varies from 2 hours to 8 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated total annual reporting burden: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 14, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–18193 Filed 7–31–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to purchase price allocations in deemed and actual asset acquisitions.

DATES: Written comments should be received on or before September 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Kerry.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Purchase Price Allocation in Deemed and Actual Asset Acquisition.

OMB Number: 1545–1658.

Regulation Project Number: T.D. 8940.

Abstract: Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (a ''deemed asset acquisition'') when an appropriate election is made. Section 1060 provides rules for the allocation of consideration when a trade or business is transferred. The collection of information is necessary to make the election, to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets

acquired in the deemed asset acquisition.

Current Actions: There are no changes to the paperwork burden previously approved by OMB. This document is being submitted for renewal purposes only.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, and farms.

The regulation provides that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulation also provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594.

The burden for the collection of information in § 1.338–2(e)(4) is as follows:

Estimated Number of Respondents/Recordkeeper: 45.

Estimated Average Annual Burden per Respondent/Recordkeeper: 34 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 25.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 14, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–18186 Filed 7–31–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4423, Application for Filing Affordable Care Act (ACA) Information Returns.

DATES: Written comments should be received on or before September 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Stacey Becker, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION: Requests for additional information, or copies of the information collection and instructions should be addressed to Joe Durbala, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Filing Affordable Care Act (ACA) Information Returns.

OMB Number: 1545–2251.

Form Numbers: 4423.

Abstract:

IRC § 6055 states beginning in January 2015, Health Insurance Marketplaces will be required to provide end of year information reporting in the form of information returns. IRC § 6056 states all insurance providers issuing Minimal Essential Coverage and Applicable Large Employers will have the option to begin voluntarily transmitting information returns to meet ACA information reporting requirements in 2015; however, these requirements will become mandatory in January 2016, for the 2015 Tax Year. Section 6011(e)(2)(A) of the Internal Revenue Code provides that any person, including a corporation, partnership, individual, estate, or trust, who is required to file 250 or more information returns, must file such returns electronically. Form 4423 will be used when a company is a foreign filer that does not have an Employer Identification Number (EIN) and cannot use the electronic application process to apply for an Affordable Care Act Transmitter Control Code.

Current Actions: Requesting OMB approval to add Form 4423 under this currently approved OMB number.

Type of Review: Revision to a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, and not-for-profit entities.

Estimated Number of Responses: 6.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 2.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 29, 2014.

Stacey Becker,

Director, Tax Forms and Publications Division.

[FR Doc. 2014–18199 Filed 7–31–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing, qualified severance of a trust for generation-skipping transfer (GST) tax purposes.

DATES: Written comments should be received on or before September 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to, R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Kerry Dennis, at Internal Revenue Service, Room 6219, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes

OMB Number: 1545–1902.

Regulation Project Number: T.D.9348.

Abstract: This information is required by the IRS for qualified severances. It will be used to identify the trusts being severed and the new trusts created upon severance.

Current Actions: There is no change to the existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–18196 Filed 7–31–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8718

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8718, User Fee for Exempt Organization Determination Letter Request.

DATES: Written comments should be received on or before September 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: User Fee for Exempt Organization Determination Letter Request.

OMB Number: 1545–1798.

Form Number: Form 8718.

Abstract: The Omnibus Reconciliation Act of 1990 requires payment of a ''user fee'' with each application for an exempt organization determination letter. Because of this requirement, the Form 8718 was created to provide filers the means to enclose their payment and indicate what type of request they were making.

Current Actions: The Department has updated the burden associated with the ICR to reflect its most recent data on Form 8718 filings. We updated our estimated number of respondents to 14,376 which will decrease our estimated total annual burden hours by 15,948 hours (16,667 hours to 719 hours). The estimate is based on updated filing projections and previous year filings. There are no additional program changes that will affect the burden estimates

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 14,376.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 719 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–18185 Filed 7–31–14; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendment to Policy Statement § 1B1.10, effective November 1, 2014.

SUMMARY: The Sentencing Commission hereby gives notice of an amendment to a policy statement and commentary made pursuant to its authority under 28 U.S.C. 994(a) and (u). The Commission promulgated an amendment to Policy Statement § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) clarifying when, and to what extent, a sentencing reduction is considered consistent with the policy statement and therefore authorized under 18 U.S.C. 3582(c)(2). The amendment expands the listing in § 1B1.10(d) (as redesignated by Amendment 1 of the amendments submitted to Congress on April 30, 2014) to include Amendment 782 (Amendment 3 of the amendments submitted to Congress on April 30, 2014) as an amendment that may be available for retroactive application. The amendment also inserts a new subsection (e) to the policy statement with a special instruction requiring that any order granting sentence reductions based on Amendment 782 shall not take effect until November 1, 2015, or later, and adds a new application note to § 1B1.10 to explain and clarify this special instruction.

DATES: The effective date of this amendment is November 1, 2014. However, as a result of the special instruction, offenders cannot be released from custody pursuant to retroactive application of Amendment 782 before November 1, 2015.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, 202–502–4502, *jdoherty@ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o), and specifies in what circumstances and by what amount sentences of imprisonment may be reduced if the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses pursuant to 28 U.S.C. 994(u).

The amendment to Policy Statement § 1B1.10 set forth in this notice and the text of the amendments submitted to Congress on April 30, 2014 (published in 79 FR 25996 (May 6, 2014)) are also available on the Commission's Web site at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (u).

Patti B. Saris,

Chair.

1. Amendment: Section 1B1.10, as amended by Amendment 780 (Amendment 1 of the amendments submitted to Congress on April 30, 2014, 79 FR 25996 (May 6, 2014)), is further amended in subsection (d) by striking ''and'' and by inserting '', and 782 (subject to subsection (e)(1))'' before the period at the end;

and by adding at the end the following new subsection (e):

''(e) *Special Instruction.*—

(1) The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later.''.

The Commentary to § 1B1.10 captioned ''Application Notes'', as amended by Amendment 780 (Amendment 1 of the amendments submitted to Congress on April 30, 2014, 79 FR 25996 (May 6, 2014)), is further amended by redesignating Notes 6 and 7 as Notes 7 and 8, respectively;

and by inserting after Note 5 the following new Note 6:

''6. *Application to Amendment 782.*—As specified in subsection (d) and (e)(1), Amendment 782 (generally revising the Drug Quantity Table and chemical quantity tables across drug and chemical types) is covered by this policy statement only in cases in which the order reducing the defendant's term of imprisonment has an effective date of November 1, 2015, or later.

A reduction based on retroactive application of Amendment 782 that does not comply with the requirement that the order take effect on November 1, 2015, or later is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. 3582(c)(2).

Subsection (e)(1) does not preclude the court from conducting sentence reduction proceedings and entering orders under 18 U.S.C. 3582(c)(2) and this policy statement before November 1, 2015, provided that any order reducing the defendant's term of imprisonment has an effective date of November 1, 2015, or later.''.

Reason for Amendment: This amendment expands the listing in § 1B1.10(d) to implement the directive in 28 U.S.C. 994(u) with respect to guideline amendments that may be considered for retroactive application. The Commission has determined that Amendment 782, subject to the limitation in new § 1B1.10(e) delaying the effective date of sentence reduction orders until November 1, 2015, should be applied retroactively.

Amendment 782 reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in § 2D1.1, and made parallel changes to § 2D1.11. Under the applicable standards set forth in the background commentary to § 1B1.10, the Commission considers the following factors, among others: (1) The purpose of the amendment, (2) the magnitude of the change in the guideline range made by the amendment, and (3) the difficulty of applying the amendment retroactively. *See* § 1B1.10, comment. (backg'd.). Applying those standards to

Amendment 782, the Commission determined that, among other factors:

(1) The purposes of the amendment are to reflect the Commission's determination that setting the base offense levels above mandatory minimum penalties is no longer necessary and that a reduction would be an appropriate step toward alleviating the overcapacity of the federal prisons. *See* 28 U.S.C. 994(g) (requiring the Commission to formulate guidelines to ''minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons'').

(2) The number of cases potentially involved is large, and the magnitude of the change in the guideline range is significant. The Commission determined that an estimated 46,000 offenders may benefit from retroactive application of Amendment 782 subject to the limitation in § 1B1.10(e), and the average sentence reduction would be approximately 18 percent.

(3) The administrative burdens of applying Amendment 782 retroactively are significant but manageable given the one-year delay in the effective date, which allows courts and agencies more time to prepare. This determination was informed by testimony at the Commission's June 10, 2014 public hearing on retroactivity and by other public comment received by the Commission.

The Commission determined that public safety, among other factors, requires a limitation on retroactive application of Amendment 782. In light of the large number of cases potentially involved, the Commission determined that the agencies of the federal criminal justice system responsible for the offenders' reentry into society need time to prepare, and to help the offenders prepare, for that reentry. For example, the Bureau of Prisons has the responsibility under 18 U.S.C. 3624(c) to ensure, to the extent practicable, that the defendant will spend a portion of his or her term of imprisonment under conditions that will afford the defendant a reasonable opportunity to adjust to and prepare for his or her reentry into the community. The Commission received testimony indicating that some offenders released pursuant to earlier retroactive guideline amendments had been released without having had this opportunity. In addition, for many of the defendants potentially involved, their sentence includes a term of supervised release after imprisonment. The judiciary and its probation officers will have the responsibility under 18 U.S.C. 3624(e) to supervise those defendants when they are released by the Bureau of Prisons. The Commission received testimony from the Criminal Law Committee of the Judicial Conference of the United States that a delay would permit courts and probation offices to prepare to effectively supervise this increased number of defendants.

The Commission concluded that a one-year delay in the effective date of any orders granting sentence reductions under Amendment 782 is needed (1) to give courts adequate time to obtain and review the information necessary to make an individualized determination in each case of whether a sentence reduction is appropriate, (2) to ensure that, to the extent practicable, all offenders who are to be released have the opportunity to participate in reentry programs and transitional services, such as placement in halfway houses, while still in the custody of the Bureau of Prisons, which increases their likelihood of successful reentry to society and thereby promotes public safety, and (3) to permit those agencies that will be responsible for offenders after their release to prepare for the increased responsibility. Therefore, the Commission added a Special Instruction at subsection (e) providing that a reduced term of imprisonment based on retroactive application of Amendment 782 shall not be ordered unless the effective date of the court's order is November 1, 2015, or later. An application note clarifies that this special instruction does not preclude the court from conducting sentence reduction proceedings before November 1, 2015, as long as any order reducing the defendant's term of imprisonment has an effective date of November 1, 2015, or later. As a result, offenders cannot be released from custody pursuant to retroactive application of Amendment 782 before November 1, 2015.

In addition, public safety will be considered in every case because § 1B1.10 requires the court, in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted, to consider the nature and seriousness of the danger to any person or the community that may be posed by such a reduction. *See* § 1B1.10, comment. (n.1(B)(ii)).

[FR Doc. 2014–18147 Filed 7–31–14; 8:45 am]

BILLING CODE 2210–40–P

FEDERAL REGISTER

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Part II

Department of Justice

28 CFR Part 36
Nondiscrimination on the Basis of Disability by Public Accommodations—Movie Theaters; Movie Captioning and Audio Description; Proposed Rule

DEPARTMENT OF JUSTICE

28 CFR Part 36

[CRT Docket No. 126; AG Order No. 3449–2014]

RIN 1190–AA63

Nondiscrimination on the Basis of Disability by Public Accommodations—Movie Theaters; Movie Captioning and Audio Description

AGENCY: Department of Justice, Civil Rights Division.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (Department) is issuing this notice of proposed rulemaking (NPRM) in order to propose amendments to its regulation for title III of the Americans with Disabilities Act (ADA), which covers public accommodations and commercial facilities, including movie theaters. The Department is proposing to explicitly require movie theaters to exhibit movies with closed captioning and audio description at all times and for all showings whenever movies are produced, distributed, or otherwise made available with captioning and audio description unless to do so would result in an undue burden or fundamental alteration. The Department is also proposing to require movie theaters to have a certain number of individual closed captioning and audio description devices unless to do so would result in an undue burden or fundamental alteration. The Department is proposing a six-month compliance date for movie theaters' digital movie screens and is seeking public comment on whether it should adopt a four-year compliance date for movie theaters' analog movie screens or should defer rulemaking on analog screens until a later date.

DATES: The Department invites written comments from members of the public. Written comments must be postmarked and electronic comments must be submitted on or before September 30, 2014. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of that day.

ADDRESSES: You may submit comments, identified by RIN 1190–AA63, by any one of the following methods:

- *Federal eRulemaking Web site: http://www.regulations.gov*. Follow the Web site's instructions for submitting comments. The Regulations.gov Docket ID is DOJ–CRT–126.
- *Regular U.S. mail:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885.
- *Overnight, courier, or hand delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4039, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Zita Johnson-Betts, Deputy Section Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

You may obtain copies of this NPRM in alternative formats by calling the ADA Information Line at (800) 514–0301 (voice) and (800) 514–0383 (TTY). This NPRM is also available on the Department's Web site at *http://www.ada.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Submission of Comments and Posting of Public Comments

You may submit electronic comments to *http://www.regulations.gov*. When submitting comments electronically, you must include DOJ–CRT–126 in the search field, and you must include your full name and address. Electronic files should avoid the use of special characters or any form of encryption and should be free of any defects or viruses.

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov*. Submission postings will include any personal identifying information (such as your name and address) included in the text of your comment. If you include personal identifying information (such as your name and address), in the text of your comment but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also identify all the personal identifying information you want redacted. Similarly, if you submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Relationship to Other Laws

The Department of Justice regulation implementing title III, 28 CFR 36.103, provides that except as otherwise provided in part 36, that part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title. *See* § 36.103(a). In addition, the title III regulation provides that part 36 does not affect the obligations of a recipient of Federal financial assistance to comply with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and any implementing regulations issued by Federal agencies. *See* § 36.103(b). Finally, part 36 does not invalidate or limit the remedies, rights, and procedures of any other Federal, State, or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them. *See* § 36.103(c).

These provisions remain unchanged. Compliance with the Department's title II and title III regulations does not ensure compliance with other Federal statutes.

I. Executive Summary

Purpose of Proposed Rule

The Department of Justice (Department) is issuing this notice of proposed rulemaking (NPRM) in order to propose amendments to its regulation implementing title III of the Americans with Disabilities Act of 1990 (ADA), which covers public accommodations and commercial facilities—including movie theaters—to explicitly require movie theaters to exhibit movies with closed captioning and audio description, as well as to provide individual captioning and audio-description devices for patrons who are deaf or hard of hearing or blind or have low vision. In the movie theater context, ''closed captioning'' refers to captions that only the patron requesting the closed captions can see because the captions are delivered to the patron at or near the patron's seat. Audio description is a technology that enables individuals who are blind or have low vision to enjoy movies by providing a spoken narration of key visual elements

of a visually delivered medium, such as actions, settings, facial expressions, costumes, and scene changes. Audio description can be transmitted to a user's wireless headset through infra-red or FM transmission.

Title III of the ADA contains broad language prohibiting public accommodations from discriminating against individuals with disabilities, 42 U.S.C. 12182(a), as well as more specific statutory provisions intended to counter particular forms of disability-based discrimination by owners, operators, or lessees of public accommodations. Of particular relevance to this rulemaking, covered entities must take ''such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently * * * because of the absence of auxiliary aids and services'' unless they can show that doing so would result in a fundamental alteration or undue burden. 42 U.S.C. 12182(b)(2)(A)(iii). The Department's regulation implementing title III's auxiliary aid provision reiterates the obligation of covered entities to ensure effective communication with individuals with disabilities and identifies, among other things, open captioning, closed captioning, and audio recordings, as examples of auxiliary aids and services. 28 CFR 36.303(a)–(c).

Despite movie theaters' title III obligation to provide effective communication to patrons who are deaf or hard of hearing or blind or have low vision, these individuals are often shut out from the movie-going experience; this exclusion occurs even though the vast majority of motion pictures released by the major domestic movie studios include closed captioning and to a lesser extent, audio description. While there has been an increase in the number of movie theaters exhibiting movies with closed captions and to a much lesser extent, audio description, due in large part to successful disability rights litigation brought by private plaintiffs during the past few years, the availability of movies exhibited with closed captions and audio description varies significantly across the United States depending upon locality and movie theater ownership. As a result, persons who are deaf or hard of hearing or blind or have low vision, who represent an ever-increasing proportion of the population, still cannot fully take part in movie-going outings with family or friends, join in social conversations about recent movie releases, or otherwise participate in a meaningful way in this important aspect of American culture.

The ADA requirements for effective communication apply to all public accommodations (including movie theaters) in every jurisdiction in the United States and should be consistently applied. The ADA protects the rights of persons with disabilities throughout the United States; the right to access movies exhibited with closed captioning and audio description should not depend on whether the person who is deaf or hard of hearing or is blind or has low vision resides in a jurisdiction where movie theaters, subject to a consent decree or settlement, exhibit movies with closed captioning or audio description. And, even in jurisdictions where theaters exhibit movies with captioning and audio description, many do not make captioning and audio description available at all movie showings. Moreover, recent technological changes in the movie theater industry—including wide-spread conversion from analog (film) projection to digital cinema systems—make exhibition of captioned and audio-described movies easier and less costly. The Department is thus convinced that regulation is warranted at this time in order to achieve the goals and promise of the ADA.

Major Provisions

The major provisions of the proposed rule can be summarized as follows.

First, as of the rule's effective date, which the Department is proposing to be 6 months after the publication of a final rule in the **Federal Register**, the NPRM proposes to require movie theaters with digital screens (generally, those exhibiting movies captured on data files stored in a hard drive or flash drive) to exhibit movies with closed captions (although theaters may, at their own discretion, exhibit movies with open captions instead) and audio description, for all screenings when such movies are produced and distributed with these features unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, *i.e.,* significant difficulty or expense. Such an across-the-board requirement fulfills the effective communication objective by permitting individuals who are deaf or hard of hearing or blind or have low vision to fully and equally participate in one of the most quintessential forms of American entertainment—going out to the movies along with the rest of the movie-going public.

In no case would movie theaters be required to create their own captioning or audio descriptions for movies. Rather, whenever the movies that theaters choose to screen are produced and distributed with these accessibility features, movie theaters would be required to ensure that they obtain and then screen those versions. This rule would not prohibit movie theaters from screening movies that are not produced with captions or audio description.

Second, the NPRM does not propose a specific compliance date for analog screens (generally, those exhibiting movies in the traditional form of 35 mm film) in movie theaters. Instead, the Department seeks public comment on two options. Option 1: Whether the rule should adopt a delayed compliance date for analog screens four years from the publication of a final rule in the **Federal Register**. The Department believes that a delayed compliance date would allow any small theaters that remain analog to obtain the necessary resources to purchase the equipment to provide closed captioning and audio description. Option 2: Because the state of analog movies is in such flux, whether the Department should defer rulemaking with respect to analog movie screens until a later date.

Third, the NPRM proposes to require movie theaters to have a certain number of individual captioning devices capable of delivering the captions at the seat of the individual and to provide them to patrons upon request. The proposed numbers are based upon the number of seats in the movie theater itself and can be shared among the screens in the theater. Individual captioning devices are a necessary part of the process of delivering closed captions, and this requirement is designed to ensure that there will be sufficient numbers of devices available for use when individuals who are deaf or hard of hearing attend the movies.

Fourth, the NPRM proposes to require movie theaters to have a certain number of devices capable of delivering audio description and to provide them to patrons upon request. The NPRM recognizes that the devices currently required by the ADA for assistive listening often contain an extra channel and therefore can also be used to deliver audio description. The NPRM proposes minimal scoping for audio description listening devices and also permits movie theaters that have two-channel devices for assistive listening to use those devices for audio description in lieu of purchasing additional devices.

Fifth, the NPRM proposes to require that movie theaters ensure that their staff has the capability to operate the

equipment to show captions and audio description and to show patrons how to use individual devices.

Finally, the NPRM proposes that movie theaters provide the public with notice about the availability of captions and audio description. This provision is necessary because currently not all movies are produced with captions and audio description, and moviegoers who are deaf or hard of hearing or blind or have low vision, should have the ability to find out which movies are accessible to them.

As with other effective communication obligations under the ADA, covered entities do not have to comply with these requirements to the extent that they constitute an undue burden or fundamental alteration.

Costs and Benefits

With respect to the costs and benefits of this rule, the Department has prepared an Initial Regulatory Assessment (Initial RA). The Initial RA assesses the likely costs and benefits of the proposed rule. Expected benefits are discussed and likely costs are estimated for all theaters over the projected life of the rule (15 years), as well as for ''small businesses'' in the movie exhibition industry as part of an Initial Regulatory Flexibility Analysis (IRFA), included therein.

The Initial RA provides estimates of the total costs for two options. Option 1 assumes a compliance date for digital theaters of six months from the publication of the final rule and a compliance date for analog theaters of four years from the publication date of the final rule. Option 2 assumes that the rule will only apply to digital theaters and that application of the rule's requirements to analog theaters will be deferred. For Option 1, the total cost for all theaters over the 15-year period following publication of this rule in final form will likely range from $177.8 million to $225.9 million when using a 7 percent discount rate, and from $219.0 million to $275.7 million when using a 3 percent discount rate, depending on which baseline is used regarding the extent to which theaters are or will soon be providing movie captioning and audio description as proposed in this rule, but independently of this rulemaking.[1] Under Option 1, the annualized costs range from $19.5 million to $24.8 million when using a 7 percent discount rate, and from $18.3 million to $23.1 million when using a 3 percent discount rate. For Option 2, total costs for all theaters with digital screens over the 15-year period following publication of this rule in final form will likely range from $138.1 million to $186.2 million when using a 7 percent discount rate, and from $169.3 million to $226.0 million when using a 3 percent discount rate, depending on which baseline is used regarding the extent to which theaters are or will soon be providing movie captioning and audio description as proposed in this rule, but independently of this rulemaking.[2] When annualized, these costs range from $15.2 million to $20.4 million when using a 7 percent discount rate, and from $14.2 million to $18.9 million when using a 3 percent discount rate. In either case, the Initial RA shows that estimated annual costs for this proposed rule would not exceed $100 million in any year (under any of the three baseline scenarios).

TABLE ES–1—ANNUALIZED COSTS AND BENEFITS OF PROPOSED RULE

[2015 Dollars, 15-year time horizon]

7% Discount rate			3% Discount rate		
Baseline 1 assumptions (one screen per-theater)	Baseline 2 assumptions (litigation-based)	Baseline 3 assumptions (NATO survey based)	Baseline 1 assumptions (one screen per-theater)	Baseline 2 assumptions (litigation-based)	Baseline 3 assumptions (NATO survey based)
Costs (million $)					
Option 1—Four Year Compliance for Analog Screens					
$24.8	$21.1	$19.5	$23.1	$19.7	$18.3
Option 2—Deferred Rulemaking for Analog Screens					
$20.4	$16.7	$15.2	$18.9	$15.6	$14.2
Benefits					
	The proposed rule would address the discriminatory effects of communication barriers at movie theaters encountered by individuals who are deaf or hard of hearing or are blind or have low vision. By ensuring that movie theaters screen those movies that are produced and distributed with the necessary auxiliary aids and services—captioning and audio description—and that theaters provide the individual devices needed to deliver these services to patrons with these particular disabilities, this rule would afford such individuals an equal opportunity to attend movies and follow both the audio and visual aspects of movies exhibited at movie theaters. Although the Department is unable to monetize or quantify the benefits of this proposed rule, it would have important benefits. For example, it would provide people with hearing and vision disabilities better access to the movie viewing experience enjoyed by others; it would allow such persons to attend and enjoy movies with their family members and acquaintances; it would allow people with hearing or vision disabilities to participate in conversations about movies with family members and acquaintances; and it would promote other hard-to-quantify benefits recognized in Executive Order 13563 such as equity, human dignity, and fairness.				

[1] Baseline 1 (only one screen per-theater already has the necessary equipment); Baseline 2 (all theaters of those companies affected by recent litigation/settlement agreements already have the necessary equipment); Baseline 3 (all digital theaters estimated by the National Association of Theater Owners (NATO) in 2013 as having captioning capabilities (53 percent) have done so independently of the proposed rule's requirements). *See* Initial RA for further details on Baseline estimations.

[2] Baseline 1 (only one screen per-theater already has the necessary equipment); Baseline 2 (all theaters of those companies affected by recent litigation/settlement agreements already have the necessary equipment); Baseline 3 (all digital theaters estimated by NATO in 2013 as having captioning capabilities (53 percent) have done so independently of the proposed rule's requirements). *See* Initial RA for further details on Baseline estimations.

Because movie theater complexes vary greatly by number of screens, which significantly impacts overall costs per facility, the Initial RA breaks the movie exhibition industry into four theater types based on size—Megaplexes (16 or more screens), Multiplexes (8–15 screens), Miniplexes (2–7 screens), and Single Screen Theaters—and for Option 1, by digital or analog system. The average capital cost for digital Megaplex theaters in the first year is estimated to total $38,547, while the average capital cost for digital single screen theaters in the first year is estimated to total $3,198. Should the Department proceed under Option 1 and cover analog screens in the final rule, though with a four-year delayed compliance date, per theater costs for analog theaters would be higher than those for digital theaters for each type or size. The first year per-theater capital cost for analog single screen theaters is estimated to total $8,172. The first year per-theater capital costs for digital single screen theaters would average $3,198.

The individuals who will directly benefit from this rule are those persons with hearing or vision disabilities who, as a result of this rule, would be able for the first time to attend movies with closed captioning or audio description in theaters across the country on a consistent basis. Individuals who will indirectly benefit from this rule are the family and friends of persons with hearing and vision disabilities who would be able to share the movie-going experience more fully with their friends or loved ones with hearing and vision disabilities.

The benefits of this rule are difficult to quantify for multiple reasons. The Department has not been able to locate robust data on the rate at which persons with disabilities currently go to movies shown in movie theaters. In addition, as a result of this rule, the following number of persons will change by an unknown amount: (1) The number of persons with disabilities who will newly go to movies, (2) the number of persons with disabilities who will go to movies more often, (3) the number of persons who will go to the movies as part of a larger group that includes a person with a disability, and (4) the number of persons with disabilities who would have gone to the movies anyway but under the rule will have a fuller and more pleasant experience. In addition, the Department does not know precisely how many movie screens currently screen movies with closed captioning and audio description, or how many people with hearing or vision disabilities currently have consistent access to movie theaters that provide closed captioning and audio description. Finally, the Department is not aware of any peer-reviewed academic or professional studies that monetize or quantify the societal benefit of providing closed captioning and audio description at movie theaters.

Data on movie-going patterns of persons who are deaf or hard of hearing or are blind or have low vision is very limited, making estimations of demand very difficult. However, numerous public comments suggest that many persons who are deaf or hard of hearing or are blind or have low vision do not go to the movies at all or attend movies well below the national average of 4.1 annual admissions per person because of the lack of auxiliary aids and services that would allow them to understand and enjoy the movie.

Though we cannot confidently estimate the likely number of people who would directly benefit from this proposed rule, we have reviewed data on the number of people with hearing or vision disabilities in the United States. The Census Bureau estimates that 3.3 percent of the U.S. population has difficulty seeing, which translates into a little more than eight million individuals in 2010, and a little more than two million of those had ''severe'' difficulty seeing.[3] At the same time, the Census Bureau estimates that 3.1 percent of people had difficulty hearing, which was a little more than 7.5 million individuals in 2010, and approximately one million of them having ''severe'' difficulty hearing. Not all of these people would benefit from this proposed rule. For example, some people's hearing or vision disability may not be such that they would need closed captioning or audio description. Some people with hearing or visions disabilities may not want to use the equipment for a variety of reasons. Others would not attend public screenings of movies even if theaters provided closed captioning and audio description simply because they do not enjoy going out to the movies—just as is the case among persons without disabilities.[4] Some people with hearing or vision disabilities may already have consistent access to theaters that screen movies with closed captioning and audio description. And some theaters may not provide closed captioning and audio description for all their movies because it would be an undue burden under the ADA to do so.

In addition to the direct beneficiaries of the proposed rule discussed above, others may be indirect beneficiaries of this rule. Family and friends of persons with these disabilities who wish to go to the movies as a shared social experience will now have greater opportunities to do so. The Department received numerous comments from individuals who are deaf or hard of hearing or are blind or have low vision in response to its 2010 Advance Notice of Proposed Rulemaking on Movie Captioning and Video Description in Movie Theaters describing how they were unable to take part in the movie-going experience with their friends and family because of the unavailability of captioning or audio description. Many individuals felt that this not only affected their ability to socialize and fully take part in family and social outings, but also deprived them of the opportunity to meaningfully engage in the discourse that often surrounds movie attendance. (*See* the Initial RA, Section 5 (Benefits) for more details and description of the potential benefits of this proposed rule.) Of perhaps greater significance to the discussion of the benefits of this rule, however, are issues relating to fairness, equity, and equal access, all of which are extremely difficult to monetize, and the Department has not been able to effectively quantify and place a dollar value on those benefits. Regardless, the Department believes the non-quantifiable benefits justify the costs of requiring captioning and audio description at movie theaters nationwide.

In keeping with the Regulatory Flexibility Act (RFA), the Initial RA examined the economic impact of the proposed rule on small businesses in the movie exhibition industry. The current size standard for a small movie theater business is $35.5 million dollars in annual revenue. In 2007, the latest year for which detailed breakouts by industry and annual revenue are available, approximately 98 percent of movie theater firms met the standard for small business, and these firms

[3] The Census defines difficulty seeing as ''experiencing blindness or having difficulty seeing words or letters in ordinary newsprint even when normally wearing glasses or contact lenses.'' It defines difficulty hearing as ''experiencing deafness or having difficulty hearing a normal conversation, even when wearing a hearing aid.'' *See* U.S. Census Bureau, U.S. Department of Commerce, P70–131, *Americans with Disabilities: 2010 Household Economic Studie*s at 8 (2012), available at *http://www.census.gov/prod/2012pubs/p70-131.pdf* (last visited July 14, 2014).

[4] In 2012, a little more than two thirds (68 percent) of the U.S. and Canadian population over two years old went to a movie at a movie theater at least once that year. *See* Motion Picture Association of America, *Theatrical Market Statistics* (2012), available from Movie Picture Association of America, *http://www.mpaa.org/wp-content/uploads/2014/03/2012-Theatrical-Market-Statistics-Report.pdf* (last visited July 14, 2014).

managed approximately 53 percent of movie theater establishments.[5] The IRFA estimates the average initial capital costs per-firm for firms that display digital or analog movies under Option 1 and for firms that display digital movies under Option 2. The average costs for small firms (which have a proportionately higher number of Single Screens and Miniplexes) were between approximately 0.7 percent to 2.1 percent of their average annual receipts for firms with digital theaters, and between approximately 2.0 percent to 5.7 percent of average annual receipts for firms with analog theaters. The Department has determined that this proposed rule will have a significant economic impact on a substantial number of small businesses.

The Department has used the IRFA to examine other ways, if possible, to accomplish the Department's goals with fewer burdens on small businesses. Based on its assessment, the Department has decided to seek public comment on two options: One that would adopt a four-year compliance date for theaters' analog screens (Option 1), and the other that would defer application of the rule's requirements to movie theaters' analog screens and consider additional rulemaking at a later date (Option 2).

II. Background

A. Movie Basics, Captioning, and Audio Description Generally

The very first movies were silent films. Talking pictures, or ''talkies,'' added sound as a separate component in the mid-to-late 1920s. Today, there are two formats for exhibiting movies in theaters: Analog movies and digital movies. The term analog movie describes what is generally understood as a movie exhibited in a traditional film form (generally 35 mm film). Currently, while the cinematography portion of analog movies is exhibited in a traditional film format, the sound portion of analog movies is generally provided in a digital format. Five to six reels of film are used for a typical two-hour long analog movie. These reels must be physically delivered to each movie theater exhibiting the movie. Digital sound accompanying analog movies is captured on CD–ROMs or optically or digitally on the film itself. Digital sound is synchronized to the visual images on the screen of the analog movie by a mechanism called a reader head, which reads a time code track printed on the film.

A digital movie (digital cinema), by contrast, captures images, data, and sound on data files as a digital ''package'' that is stored on a hard drive or a flash drive. Digital movies are physically delivered to movie theaters on high resolution DVDs or removable or external hard drives, or can be transmitted to movie theaters' servers via Internet, fiber-optic, or satellite networks. Digital production, distribution, and exhibition are seen as having many advantages over analog film, including better and longer lasting image quality, availability of higher resolution images, lower production and distribution costs, ease of distribution, availability of enhanced effects such as 3D, ease of exhibition of live events or performances, and greater flexibility in arranging or increasing show times to accommodate unanticipated audience demand.

The movie picture production industry is in the midst of a large and transformative conversion to digital cinema. This conversion is viewed by the industry as one of the most profound advances in motion picture production and technology of the last 100 years. On May 14, 2013, an industry representative testified before Congress that the industry had nearly completed its transition to digital distribution and projection and that approximately 88 percent of all movie theater screens (nearly 35,000 screens) had already converted to digital. Testimony of John Fithian, President and CEO of the National Association of Theater Owners, Before the U.S. Senate Committee on Health, Education, Labor and Pension (May 14, 2013), available at *http://www.help.senate.gov/imo/media/doc/Fithian.pdf* (last visited July 14, 2014).

Captioning makes movies accessible to individuals who are deaf or hard of hearing and who are unable to benefit from the use of the assistive listening systems required for movie theaters to amplify sound. There are, at present, two types of captions available for movies: Open captions and closed captions. The terms ''closed captioning'' and ''open captioning'' have had special meaning in the movie theater context and differ from the way the terms are used in other settings (*e.g.,* television). In the movie theater context, the movie industry and the courts have used the term ''closed captioning'' to mean that when the closed captions are in use, only the patron requesting the closed captions can see the captions because the captions are delivered to the patron at or near the patron's seat. The term ''open captioning'' has been used in the movie theater context to refer to the circumstances when the theater exhibits the captions so that all patrons see the captions on or near the screen. By contrast, in the television context, the term ''closed captioning'' has been used to refer to captions that can be seen on the screen when turned on by the viewer. In order to avoid confusion between the specific requirements in this proposed rule and the ways the terms open and closed captioning have historically been used in other settings, the Department proposes using the terms ''closed movie captioning'' and ''open movie captioning'' in the regulatory text to specifically refer to captions that are provided in movie theaters. However, in the preamble, when discussing the history of captioning, the state of captioning technology, the legislative history of the ADA, and court decisions, the Department will continue to use the terms ''closed captioning'' and ''open captioning'' because such terms are used in the definition of auxiliary aids at 28 CFR 36.303(b).

Open movie captions are similar to subtitles in that the text of the dialogue is visible to everyone in the movie theater. Unlike subtitles, open movie captions also describe other sounds and sound making (*e.g.,* sound effects, music, and the character who is speaking) in an on-screen text format. Open captions in movies were sometimes referred to as ''burned-in'' or ''hardcoded'' captions because they were burned in or incorporated into the film. However, new open-captioning technology enables studios to superimpose captions without making a burned-in copy or having to deliver a special version of the movie. Currently, some movie theaters exhibit open-captioned films at certain limited showings.

Closed movie captioning, as that term is used in the regulatory text of this NPRM, refers to the display of the written text of the dialogue and other sounds or sound making only to those individuals who request it. When requested, the captions are delivered via individual captioning devices used by patrons at their seats.

Audio description[6] is a technology that enables individuals who are blind or have low vision to enjoy movies by providing a spoken narration of key visual elements of a visually delivered

[5] The size standard of $35.5 million can be found in U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf* (last visited July 14, 2014).

[6] In the Department's Advance Notice of Proposed Rulemaking on Movie Captioning and Video Description (2010 ANPRM), 75 FR 43467 (July 26, 2010), the Department used the term ''video description.'' In response to comments received from this ANPRM, the Department now refers to this process as ''audio description.''

medium, such as actions, settings, facial expressions, costumes, and scene changes. Audio description fills in information about the visual content of a movie where there are no corresponding audio elements in the film. It requires the creation of a separate script that is written by specially-trained writers and recorded on an audiotape or CD that is synchronized with the film as it is projected. The oral delivery of the script is transmitted to the user through infra-red or FM transmission to wireless headsets.

Movie studios decide which movies to provide with captioning and audio description and then arrange to have the captions and audio description produced. Movie studios include these auxiliary aids in movies before the movies are distributed to movie theaters and do not charge movie theaters for this service. Movie studios are increasing the numbers of movies produced with captioning in large part because in 1997 the Federal Communications Commission published regulations requiring programming (including movies) shown on television to be captioned. *See* 47 CFR part 79.

Movie theaters are defined in the proposed rule to include only facilities used primarily for the purpose of showing movies to the public for a fee. As of the end of 2011 there were nearly 39,000 indoor movie screens in the United States and approximately 600 drive-in movie screens. *See* National Association of Theater Owners, *Number of U.S. Movie Screens,* available at *http://natoonline.org/data/us-movie-screens/* (last visited July 14, 2014). Altogether, the four largest movie theater chains based on screen count—Regal Entertainment Group, AMC Entertainment, Inc., Cinemark USA, Inc., and Carmike Cinemas, Inc.—own or operate approximately 18,000 screens. As of 2010, the top ten domestic movie theater chains had 55 percent of the movie screens in the United States and Canada.[7] According to comments submitted by the National Association of Theater Owners (NATO) in response to the Department's Advance Notice of Proposed Rulemaking on Movie Captioning and Video Description (2010 ANPRM), 75 FR 43467 (July 26, 2010) (discussed below), as of 2010, there were approximately 83 movie theater companies in the United States that own or operate 50 or more screens and, in the aggregate, these companies operate 30,432 screens in the United States. Of the additional 931 movie theater companies that own or operate fewer than 50 screens, 450 operate four screens or fewer, and 362 owners operate one site with one or two screens.

Moreover, the number of small movie theater facilities continues to decline. Single screen and Miniplex (between two and seven screens) theaters steadily declined from 2007 to 2010, while the number of Multiplex (8–15 screens) and Megaplex (16 or more screens) theaters increased over that same time period. *See* Motion Picture Association of America (MPAA),[8] *Theatrical Market Statistics* (2011), available at *http://www.bumpercarfilms.com/assets/downloads/movies.pdf* (last visited July 14, 2014). The decline in the number of small independently owned theaters is expected to accelerate as a result of the significant decrease anticipated in the availability of first-run films in analog format, as the majority of these small independently owned theaters are analog theaters. In 2011, the head of the MPAA was reported to have predicted that analog films would disappear in less than three years. *See* Tim O'Reiley, *Theater Official Optimistic Despite Attendance Slump,* Las Vegas Review Journal (March 19, 2011), available at *http://www.reviewjournal.com/business/theater-official-optimistic-despite-attendance-slump* (last visited July 14, 2014). Similarly, at the spring 2013 CinemaCon industry convention, an industry analyst stated that by the end of 2015, analog film will no longer exist in cinemas, and it is likely that production of analog film in the United States will end by the end of 2013. *See* Lyndsey Hewitt, *Local Theaters Face Tough Times as 35 mm Faces Extinction,* Sun Gazette.com (July 11, 2013), available at *http://www.sungazette.com/page/content.detail/id/594504/Local-Theaters-Face-Tough-Times-as-35-mm-faces-extinction.html?nav=5016* (last visited July 14, 2014). Consequently, some, if not most, small independently owned theaters will likely have to close if they cannot afford to convert their projection systems from analog to digital. *See also* Colin Covert, *Final reel plays amid digital conversion,* Star Tribune (Aug. 27, 2012), available at *http://www.startribune.com/entertainment/movies/167253335.html?refer=y* (last visited July 14, 2014).

Despite the recent economic downturn, movies continue to be a major source of entertainment in the United States. In 2012, moviegoers in the United States and Canada bought a record $10.8 billion in movie tickets, with the largest number of tickets (1.36 billion) sold in three years. Motion Picture Association of America, *Theatrical Market Statistics* at 4 (2012), available at *http://www.mpaa.org/wp-content/uploads/2014/03/2012-Theatrical-Market-Statistics-Report.pdf* (last visited July 14, 2014). Movie theaters continue to draw more people than all theme parks and major U.S. sporting events combined. *Id.* at 10.

B. Legal Authority To Require Captioning and Audio Description

1. The ADA

On July 26, 1990, President George H.W. Bush signed into law the ADA, a comprehensive civil rights law prohibiting discrimination on the basis of disability. The ADA broadly protects the rights of individuals with disabilities in employment, access to State and local government services, places of public accommodation, transportation, and other important areas of American life. The ADA also requires, in pertinent part, newly designed and constructed or altered public accommodations and commercial facilities to be readily accessible to and usable by individuals with disabilities. 42 U.S.C. 12101 *et seq.*

Title III of the ADA prohibits discrimination on the basis of disability in the ''full and equal enjoyment'' of places of public accommodation (privately operated entities whose operations affect commerce and that fall into one of twelve categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreational facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (privately owned, nonresidential facilities such as factories, warehouses, or office buildings)—to comply with the ADA Standards. 42 U.S.C. 12181–12189. Title III of the ADA includes movie theaters within its definition of places of public accommodation. 42 U.S.C. 12181(7)(C). Movie studios and other entities that

[7] In addition to the four movie theater chains listed above, according to data available from the National Association of Theater Owners, the other six movie theater chains rounding out the domestic top ten as of July 2010, were Cineplex, Rave Cinemas, Marcus Theaters, Hollywood Theaters, National Amusements Inc., and Harkins Theaters.

[8] The Motion Picture Association of America (MPAA) is a trade association representing the six major producers and distributors of theatrical motion pictures, home entertainment, and television programs, including Paramount Pictures Corporation, Sony Pictures Entertainment Inc, Twentieth Century Fox Film Corporation, Universal City Studios LLP, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

produce movies to be shown in theaters are not public accommodations by virtue of the making of movies, and therefore are not covered by title III in their production of movies.

Title III makes it unlawful to discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S.C. 12182(a). Moreover, title III prohibits public accommodations such as movie theaters from affording an unequal or lesser service to individuals or classes of individuals with disabilities than is offered to other individuals. 42 U.S.C. 12182(b)(1)(A)(ii). Title III requires public accommodations to take ''such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently . . . because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.'' [9] 42 U.S.C. 12182(b)(2)(A)(iii). The statute defines auxiliary aids and services to include ''qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments'' and ''taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments.'' 42 U.S.C. 12103(1)(A)–(B).

2. The ADA Title III Regulation [10]

The Department of Justice's regulation implementing title III of the ADA provides additional examples of auxiliary aids and services that are required by the statute. The regulation lists open and closed captioning and audio recordings and other effective methods of making visually-delivered materials available to individuals with visual impairments as examples of auxiliary aids and services that should be provided by public accommodations. 28 CFR 36.303(b)(1)–(2). This list was revised in 2010 to reflect changes in technology and the auxiliary aids and services commonly used by individuals who are deaf or hard of hearing or blind or have low vision. 75 FR 56236, 56253–56254 (Sept. 15, 2010). The title III regulation reiterates the requirement of the statute, stating that a public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that providing such aids and services would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden. 28 CFR 36.303(a). The title III regulation reflects that the overarching objective and obligation imposed by the auxiliary aids and services requirement is that a public accommodation must furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. 28 CFR 36.303(c)(1). The type of auxiliary aid or service necessary to ensure effective communication varies in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. 28 CFR 36.303(c)(1)(ii). Moreover, in order to be effective, auxiliary aids and services must be provided in accessible formats and in a timely manner. *Id.* For individuals who are deaf or hard of hearing and are prevented from being able to effectively use the assistive listening receivers currently provided in movie theaters to amplify sound, the only auxiliary aids presently available that would effectively communicate the dialogue and sounds in a movie are captioning or sign language interpreting. Likewise, for individuals who are blind or who have very low vision, the only auxiliary aid presently available that would effectively communicate the visual components of a movie is audio description.

As stated above, a public accommodation is relieved of its obligation to provide a particular auxiliary aid (but not all auxiliary aids), if to do so would result in an undue burden or a fundamental alteration. To that end, the Department's title III regulation specifically defines undue burden as ''significant difficulty or expense'' and, emphasizing the flexible and individualized nature of any such defense, lists five factors that must be considered when determining whether an action would constitute an undue burden. *See 28* CFR 36.104. These factors include: (1) The nature and cost of the action; (2) the overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site; (3) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question, to any parent corporation or entity; (4) if applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; and the number, type, and location of its facilities; and (5) if applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity. *Id.* The undue burden defense entails a fact-specific examination of the cost of a specific action and the specific circumstances of a particular public accommodation. This defense also is designed to ensure that the needs of small businesses, as well as large businesses, are addressed and protected.

The Department defines fundamental alteration as a ''modification that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.'' U.S. Department of Justice, *Americans with Disabilities Act ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities* III–4.3600, available at *http://www.ada.gov/taman3.html* (last visited July 14, 2014).

If a provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration or an undue burden, the public accommodation is not relieved of its obligations to provide auxiliary aids and services. The public accommodation is still required to provide an alternative auxiliary aid or service, if one exists, that would not result in such an alteration or burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods and services offered by the public accommodation. 28 CFR 36.303(g). It is the Department's view that it would not be a fundamental alteration of the business of showing movies in theaters to exhibit movies with closed captions and audio descriptions in order to provide effective communication to

[9] An undue burden is one that results in significant difficulty or expense for the public accommodation. *See* 28 CFR 36.104.

[10] Congress gave the Attorney General the authority and responsibility to issue regulations to carry out the provisions of title III of the ADA. 42 U.S.C. 12186(b).

individuals who are deaf or hard of hearing or blind or have low vision.

3. The Legislative History of the ADA

While the ADA itself contains no explicit language regarding captioning (or audio description) in movie theaters, the legislative history of title III states that ''[o]pen captioning * * * of feature films playing in movie theaters, is not required by this legislation. Filmmakers are, however, encouraged to produce and distribute open-captioned versions of films, and theaters are encouraged to have at least some pre-announced screenings of a captioned version of feature films.'' H.R. Rep. No. 101–485, pt. 2, at 108 (1990); S. Rep. No. 101–116, at 64 (1989).[11] Congress was silent on the question of closed captions in movie theaters, a technology not yet developed for use in movie theaters, but it acknowledged that closed captions might be an effective auxiliary aid and service for making aurally delivered information available to individuals who are deaf or hard of hearing. *See* H.R. Rep. No. 101–485, pt. 2, at 107. Importantly, the House Committee stated that ''technological advances can be expected to further enhance options for making meaningful and effective opportunities available to individuals with disabilities. Such advances may require public accommodations to provide auxiliary aids and services in the future which today would not be required because they would be held to impose undue burdens on such entities.'' *Id.* at 108.[12] Similarly, in 1991, when issuing its original title III regulation, the Department stated in preamble language that ''[m]ovie theaters are not required * * * to present open-captioned films,'' but the Department was silent as to closed captioning. 56 FR 35544, 35567 (July 26, 1991). The Department also noted, however, that ''other public accommodations that impart verbal information through soundtracks on films, video tapes, or slide shows are required to make such information accessible to persons with hearing impairments. Captioning is one means to make the information accessible to individuals with disabilities.'' *Id.*

The legislative history of the ADA and the Department's commentary in the preamble to the 1991 regulation make clear that although Congress was not requiring open captioning of movies in 1990, it was leaving open the door for the Department to require captioning in the future as the technology developed. Congress did not specifically mention audio description in the legislative history; however, audio description clearly falls within the type of auxiliary aid contemplated by the ADA. Moreover, given the present state of technology, the Department believes that mandatory requirements for captioning and audio description in movie theaters fit comfortably within the meaning of the statutory text.

4. Federal Appellate Case Law Addressing Captioning and Audio Description

In April 2010, the first and only Federal appellate court to squarely address the question of whether captioning and audio description are required in movie theaters under the ADA determined that the ADA required movie theater owner and operator Harkins Amusement Enterprises, Inc., and its affiliates, to screen movies with closed captioning and descriptive narration (audio description) unless such owners and operators could demonstrate that to do so would amount to a fundamental alteration or undue burden. *Arizona v. Harkins Amusement Enterprises, Inc.,* 603 F.3d 666, 675 (9th Cir. 2010). The Ninth Circuit held that because closed captioning and audio descriptions are correctly classified as ''auxiliary aids and services,'' a movie theater may be required to provide them under the ADA, and thus, the lower court erred in holding that these services fell outside the scope of the ADA. *Id.* (citing 42 U.S.C. 12182(b)(2)(A); 28 CFR 36.303).[13]

Representatives of the movie industry (movie studios and movie theater owners and operators) who commented on the 2010 ANPRM contended that exhibiting captioning is a fundamental alteration of its services. The Department does not agree with that assertion. As the Department asserted in its *amicus* brief filed in the *Harkins* case, exhibiting movies with captioning and audio description does not fundamentally alter the nature of the service provided by movie theaters. The service movie theaters provide is screening or exhibiting movies. The use of auxiliary aids to make that service available to those who are deaf or hard of hearing or blind or have low vision does not change that service. Rather, the provision of auxiliary aids such as captioning and audio description are the means by which these individuals gain access to the movie theaters' services and therefore achieve the ''full and equal enjoyment,'' 42 U.S.C. 12182(a), of the screening of movies. *See* Brief for the United States as Amicus Curiae Supporting Appellants and Urging Reversal at 15–16, *Harkins Amusement, supra,* (9th Cir. Feb. 6, 2009) (No. 08–16075).

C. Need for Department Action

1. Importance of Movies in American Culture

Going to the movies is a quintessential American experience. In any given month, over 56 million adults (roughly 26 percent of the adult population) make a trip to a movie theater to take in a movie. *See* Experian Marketing Services, *2010 American Movie-Goer Consumer Report,* available at *http://www.experian.com/blogs/marketing-forward/2010/02/20/2010-american-movie-goer-consumer-report/* (last visited July 14, 2014). Going to the movies is also an important social experience and pastime of teenagers and young adults. And while teenagers and young adults are more likely to go to the movies than older adults, adults over 50 outnumber young adults when it comes to raw number of moviegoers. *Id.* Moreover, going to the movies is also an important part of the American family experience. Long holiday weekends offer the movie industry some of the biggest box offices sales as families gather for the holidays and head out to the theaters together.

Movies are a part of our shared cultural experience, ''water cooler'' talk, and the subject of lunch-time conversations. The Supreme Court observed over 60 years ago that motion pictures ''are a significant medium for the communication of ideas'' and ''may

[11] In 1990, the only way to include open-captions in a movie was to create a separate print of the movie and then laser-etch, or ''burn,'' the captions onto that separate print. Limited copies of the open-captioned print were made and these copies were distributed after the uncaptioned versions to some, but by no means all, movie theaters.

[12] As the district court noted in *Ball v. AMC Entertainment, Inc.,* 246 F. Supp. 2d 17, 22 (D.D.C. 2003), ''Congress explicitly anticipated the situation presented in this case [the development of technology to provide closed captioning of movies]. Therefore, the isolated statement that open captioning of films in movie theaters was not required in 1990 cannot be interpreted to mean that [movie theaters] cannot *now* be expected and required to provide closed captioning of films in their movie theaters.''

[13] A consent decree was entered into on November 7, 2011, in which Harkins agreed to provide closed captioning and audio description at all 346 screens in its 25 movie theaters by January 15, 2013. *See* Consent Decree in *Arizona* v. *Harkins Amusement Enterprises, Inc.,* 603 F.3d 666 (9th Cir. 2010), ECF 131, CV07–703 PHX ROS, Approved 11/07/2011. In February 2012, Harkins announced that it expected to have all of its theaters equipped with closed captioning and audio description by the end of 2012. Press Release, Arizona Commission for the Deaf and Hard of Hearing, ''Harkins Theatres announces closed captioning and descriptive narration devices'' (Feb. 16, 2012), available at *http://www.acdhh.org/news/harkins-theatres-announces-closed-captioning-and-descriptive-narration-devices* (last visited July 14, 2014).

affect public attitudes and behavior in a variety of ways, ranging from direct espousal of a political or social doctrine to subtle shaping of thought which characterizes all artistic expression. The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform.'' *Joseph Burstyn, Inc.* v. *Wilson,* 343 U.S. 495, 501 (1952). When individuals who are deaf or hard of hearing or blind or have low vision have the opportunity to attend movies that they can actually understand because of the use of captions or audio description, they are exposed to new ideas and gain knowledge that contributes to the development of their communication and literacy.

The Department received numerous comments from individuals with these disabilities in response to its 2010 ANPRM describing how they were unable to take part in the movie-going experience with their friends and family because of the unavailability of captioning or audio descriptions. Many individuals felt that this not only affected their ability to socialize and fully take part in group or family outings, but also deprived them of the opportunity to meaningfully engage in the discourse that often surrounds movie attendance.

Commenters who have some functional degree of hearing, like those who use hearing aids or cochlear implants, explained that going to the movies is frustrating and unenjoyable for them. One commenter who wears a hearing aid and cannot benefit from assistive listening receivers currently provided in movie theaters said she often misses half the plot when she goes to a movie and has to rent the movie when it comes out on DVD so she can turn on the captions and learn what she has missed. Several other commenters also indicated that the assistive listening receivers available at movie theaters were only suitable for individuals with mild to moderate hearing loss.

2. Numbers of Individuals With Hearing and Vision Disabilities

According to 2010 census data, 7.6 million people reported that they experienced a hearing difficulty (defined as experiencing deafness or having difficulty hearing a normal conversation, even when wearing a hearing aid). Of those individuals, 1.1 million reported having a severe difficulty hearing. In addition, 8.1 million people reported having some degree of difficulty seeing (defined as experiencing blindness or having difficulty seeing words or letters in ordinary newsprint even when normally wearing glasses or contact lenses). Of those individuals, 2.0 million reported they were blind or unable to see. *See* U.S. Census Bureau, U.S. Department of Commerce, P70–131, *Americans with Disabilities: 2010 Household Economic Studies* at 8 (2012), available at *http://www.census.gov/prod/2012pubs/p70–131.pdf* (last visited July 14, 2014). For people aged 65 or older, Census data indicated that 4.2 million had difficulty hearing (as defined by the Census), and 3.8 million reported having difficulty seeing (as defined by the Census). *Id.* As stated above, for several reasons it is unlikely that all people who reported having a vision or hearing disability to the Census would benefit from this rule. However, hearing and vision loss are highly correlated with aging, and as the U.S. population ages,[14] the number of individuals with hearing or vision loss is projected to increase significantly. Research indicates that the number of Americans with a hearing loss has doubled during the past 30 years. *See* American Speech-Language-Hearing Association, *The Prevalence and Incidence of Hearing Loss in Adults,* available at *http://www.asha.org/public/hearing/disorders/prevalence_adults.htm* (last visited July 14, 2014). Experts predict that by 2030, severe vision loss will double along with the country's aging population. *See* American Foundation for the Blind, *Aging and Vision Loss Fact Sheet,* available at *http://www.afb.org/section.aspx?FolderID=3&SectionID=44&TopicID=252&DocumentID=3374* (last visited July 14, 2014). This increase will likely lead to a corresponding increase in the number of people who will need captioning or audio description. Not all these individuals will necessarily take advantage of the movie captioning and audio description that would be provided under this proposed rule, but a significant portion of this population would be eligible to directly benefit from this proposed rule (see, *infra,* section VI.A.3 for a more detailed discussion of the population eligible to receive benefits).

The Department believes that captioning will be used by some persons with moderate hearing loss as well as persons with severe hearing loss or who are profoundly deaf. Many individuals with hearing loss have difficulty discriminating among competing sounds in the movie and understanding what they hear, even if they can hear those sounds. Sounds from other patrons can also interfere with the ability of a patron with partial hearing loss to catch all the dialogue in a movie. Other individuals have difficulty understanding what is being said if the actors speak with foreign accents or have poor enunciation, and those patrons who rely even partly on lip reading will miss some dialogue because they cannot always see the actor's face. Individuals with hearing loss who have some level of improved hearing comprehension aided by hearing aids, middle ear implants, and cochlear implants, may also experience the same difficulty discriminating among competing sounds in the movie environment as those individuals with unaided partial hearing loss.[15] It is critical that all of these individuals are not shut out of an emblematic part of our culture.

3. Voluntary Compliance

Some movie industry commenters asserted that because Congress suggested a voluntary approach to accessibility for exhibiting movies in the 1989 and 1990 legislative history, when only burned-in open captions on separate prints of film were available, the Department should refrain from regulating in this area now and should simply continue to rely on voluntary

[14] The percentage of Americans approaching middle age or older is increasing. The 2010 Census found that during the decade spanning 2000 to 2010, the percentage of adults aged 45 to 64 years increased by 31.5 percent while the population aged 65 and over grew at a rate of 15.1 percent. By contrast, the population of adults between 18 and 44 grew by only 0.6 percent. U.S. Census Bureau, U.S. Department of Commerce, C2010BR–03, *Age and Sex Composition in the United States: 2010 Census Brief* 2 (2011), available at *www.census.gov/prod/cen2010/briefs/c2010br-03.pdf* (last visited July 14, 2014).

[15] ''While many people tend to think that the only factor in hearing loss is loudness, there are actually two factors involved: Loudness and clarity. Loss generally occurs first in the high pitch, quiet range. A mild loss can cause one to miss 25–40% of speech, depending on the noise level of the surroundings and distance from the speaker. When there is background noise, it becomes difficult to hear well; speech may be audible but may not be understandable.'' Hearing Loss Association of Oregon, *Facing the Challenge: A Survivor's Manual for Hard of Hearing People* (revised 4th ed. Spring 2011), at 8, available at *http://www.hearinglossor.org/survivor_manual.pdf* (last visited July 14, 2014). The degrees of hearing loss include: (1) Mild (25 to 40 dB): Faint or distant speech may be difficult; lip reading can be helpful; (2) Moderate (41 to 55 dB): Conversational speech can be understood at a distance of three to five feet; as much as 50% of discussions may be missed if the voices are faint or not in line of vision; (3) Moderately Severe (56 to 70 dB): Speech must be loud in order to be understood; group discussions will be difficult to follow; (4) Severe (71 to 90 dB): Voices may be heard from a distance of about 1 foot from the ear; and (5) Profound (more than 91dB): Loud sounds may be heard, but vibrations will be felt more than tones heard; vision rather than hearing, is the primary avenue for communication. *Id.*

compliance by the movie theaters. However, since that time, the technology to display open captions has evolved significantly and closed captioning technologies have been developed. Both of these developments are examples of the types of ''technological advances'' that have enhanced ''options for making meaningful and effective opportunities available to individuals with disabilities.'' H.R. Rep. No. 101–485, pt. 2, at 107. Commenters on the 2010 ANPRM advised the Department that despite these technological advances, even at that time, few movie theaters showed movies with captioning and audio description. In addition, these commenters advised the Department that in their experience, many theaters that had the capacity to show movies with captioning and audio description only did so for selected films shown at intermittent times.

In the three years since the Department last received public comment on these issues after the publication of its 2010 ANPRM (*see* discussion below), the number of movie theaters that are showing movies with closed captioning and audio description has increased as well as the times those captioned and audio described movies are shown each week. This described increase is attributable in some ways to settlements of Federal or State disability rights lawsuits brought by private plaintiffs or State attorneys general against individual movie theater companies in particular jurisdictions within the United States.[16] Despite the success of private litigation in some areas of the country, closed captions and audio description are still not available for movies produced and distributed with these features at all theaters across the United States. The Department believes that access to movies for persons who are deaf or hard of hearing or are blind or have low vision should not depend upon where they live.[17]

Consequently, the Department believes it is in the interest of both the movie theater industry and persons with disabilities to have consistent ADA requirements for movie captioning and audio description throughout the United States and that this is best accomplished through revising the ADA title III regulation as proposed in this NPRM. The Department is persuaded that it should move forward with a regulation requiring captioning and audio descriptions so that the current and ever increasing numbers of individuals who are deaf or hard of hearing or blind or have low vision and who are unable to enjoy the goods and services offered by movie theaters can participate in this facet of American life.

D. The Department's Rulemaking History Regarding Captioning and Audio Description

1. Rulemaking History Prior to the 2010 ANPRM

On September 30, 2004, the Department published an Advance Notice of Proposed Rulemaking (2004 ANPRM) to begin the process of updating the 1991 title II and title III regulations to adopt revised ADA Standards based on the relevant parts of the 2004 Americans with Disabilities and Architectural Barriers Act Accessibility Guidelines (2004 ADA/ABA Guidelines). 69 FR 58768. When the Department issued the 2004 ANPRM, it did not identify movie captioning or audio description as potential areas of regulation, but several commenters requested that the Department consider regulating in these areas.

Keeping in mind that the ADA's legislative history made clear that the ADA ought not be interpreted so narrowly or rigidly that new technologies are excluded, as the Department became aware of innovations in the field of captioning and audio description technology, it began to contemplate how these technologies might be incorporated into its ADA rules. The need for advancement in the area of access to movie theaters was necessary because assistive listening systems in movie theaters could not be used to effectively convey the audio content of movies for individuals who are deaf or who have severe or profound hearing loss. Additionally, there were no auxiliary aids being provided to individuals who are deaf to access the sound content of the movie or to individuals who are blind or have low vision to access the visual content of the movie. Accordingly, the Department decided to address the topic of requiring closed captioning and audio description (referred to as narrative description) at movie theaters in its June 17, 2008, Notice of Proposed Rulemaking (2008 NPRM). 73 FR 34508, 34530. In the 2008 NPRM, the Department stated that it was considering options under which it might require movie theaters to exhibit movies that are captioned for patrons who are deaf or hard of hearing and provide audio description for patrons who are blind or have low vision.

The 2008 NPRM did not propose any specific regulatory language with regard to movie captioning or audio description, but asked whether, within a year of the revised regulation's effective date, all new movies should be exhibited with captions and audio description at every showing or whether it would be more appropriate to require captions and audio description less frequently. The preamble made clear that the Department did not intend to specify which types of captioning to provide and stated that such decisions would be left to the discretion of the movie theaters. The Department received many comments in response to its 2008 NPRM questions from individuals with disabilities, organizations representing individuals with disabilities, nonprofit organizations, state-governmental entities, and representatives from the movie industry (movie studios and movie theaters).

Individuals with disabilities, advocacy groups, a representative from a nonprofit organization, and representatives of state governments, including 11 State attorneys general, overwhelmingly supported issuance of a regulation requiring movie theaters to exhibit captioned and audio-described movies at all showings unless doing so would result in an undue burden or

[16] *See, e.g.,* Press Release, Illinois Attorney General, ''Madigan Announces Settlement with AMC Theatres'' (Apr. 4, 2012) available at *http://illinoisattorneygeneral.gov/pressroom/2012_04/20120404.html* (last visited July 14, 2014) (settlement providing for provision of captioning and audio technology in all AMC theaters in the state of Illinois); *Wash. State Commc'n Access Project* v. *Regal Cinemas, Inc.,* 290 P.3d 331 (Wash. Ct. App. 2012) (upholding trial court decision under Washington Law Against Discrimination requiring six theater chains to provide captions in the screening of movies in order to accommodate persons who are deaf or hard of hearing.); *Arizona* v. *Harkins Amusement Enters., Inc.,* 603 F.3d 666, 675 (9th Cir. 2010) (settlement agreement filed 11/07/2011 CV07–703 PHX ROS); Complaint, *Ass'n of Late-Deafened Adults* v. *Cinemark Holdings, Inc.,* No. 10548765 (Cal. App. Dep't Super. Ct. filed Nov. 30, 2010) (complaint relating to settlement requiring Cinemark to provide closed captions in all its California theaters); Press Release, Cinemark Holdings, Inc., Cinemark and ALDA Announce Greater Movie Theatre Accessibility for Customers who are Deaf or Hard-of-Hearing (April 26, 2011), available at *http://www.cinemark.com/pressreleasedetail.aspx?node_id=22850* (last visited July 14, 2014).

[17] For example, it is the Department's understanding that persons who live in communities served only by smaller regional movie theater chains are far less likely to have access to captioned and audio-described movies than individuals with disabilities who live in California, Arizona, or any of the major cities with theaters operated by Regal, Cinemark, or AMC. The Department bases this belief on its review of the information provided by Captionfish, which is a nationwide search engine that monitors which theaters offer both closed and open captions and audio description, and updates its Web site regularly. *See* Frequently Asked Questions, *http://www.captionfish.com/faq* (last visited July 14, 2014).

fundamental alteration. These groups noted that although the technology to exhibit movies with captions and audio description has been in existence for about 10 years, most movie theaters still were not exhibiting movies with captioning and audio description. As a result, these groups indicated that they believed regulatory action should not be delayed until the conversion to digital cinema had been completed.

Representatives from the movie industry strongly urged the Department not to issue a regulation requiring captioning, or if it did so, to delay the effective date so as to coincide with the completion of conversion to digital cinema. They also objected to any requirement regarding audio description at movie theaters. Industry commenters also said that the cost of obtaining the equipment necessary to display closed-captioned and audio-described movies would constitute an undue burden.

For a more detailed discussion of the comments received in response to the 2008 NPRM, *see* 2010 ANPRM, 75 FR 43467 (July 26, 2010).

2. The 2010 Advance Notice of Proposed Rulemaking

The Department was not persuaded that strides made in making captioning and audio description technology available to moviegoers with disabilities were sufficient to make regulatory action in this area unnecessary. However, rather than issue a final rule, the Department issued a supplemental Advance Notice of Proposed Rulemaking (2010 ANPRM) on July 26, 2010, 75 FR 43467, for three reasons. First, the Department wished to obtain more information regarding several issues raised by commenters that were not addressed in the 2008 NPRM. Second, the Department sought public comment on several technical questions that arose out of comments on the 2008 NPRM. Finally, in the years since issuance of the 2008 NPRM, the Department became aware that movie theaters, particularly major movie theater chains, either had entered into, or had plans to enter into agreements with the movie studios to underwrite the conversion to digital cinema. During that same time period, however, the United States' economy and the profitability of many public accommodations experienced significant setbacks. The Department, among other things, wished to gather more information about the status of digital conversion, including projections about when movie theaters, both large and small, expected to exhibit movies using digital cinema, the percentage of movie screens expected to be converted to digital cinema by year, and any relevant protocols, standards, and equipment that had been developed for captioning and audio description for digital cinema. In addition, the Department wanted to learn whether other technologies (*e.g.,* 3D) had developed or were in the process of development that either would replace or augment digital cinema or make any regulatory requirements for captioning and audio description more difficult or expensive to implement.

In the 2010 ANPRM, the Department explained that it was considering phasing in a requirement that 50 percent of movie screens offer captioning and audio description over a five-year period. The Department did not propose any regulatory language in the ANPRM.

In order to gather the necessary information and to determine how best to frame the regulation, the Department posed 26 questions in its 2010 ANPRM. These questions were divided into six general categories: Coverage of any proposed rule; transition to digital cinema; equipment and technology for both analog and digital cinema movies; notice; training; and cost and benefits of captioning and audio description.

The Department conducted three public hearings to receive testimony on the 2010 ANPRM: The first in Chicago, Illinois, on November 18, 2010; the second in Washington, DC, on December 16, 2010; and the final hearing in San Francisco, California, on January 10, 2011. Each hearing included a full schedule of presenters, and many individuals came to listen to the various presentations.[18] These public hearings were rebroadcast on-demand through the end of the comment period (January 24, 2011) and were streamed live on the Web to viewers across the country.

The number of comments submitted by the public in response to this ANPRM was extraordinary—the Department received over 1150 comments. Commenters included hundreds of individuals, both with and without disabilities, advocacy groups representing individuals with disabilities, 13 State attorneys general, movie industry representatives, and other organizations. Industry commenters asked that the Department not regulate at that time or, in the alternative, require that only 25 percent of movie screens that have converted to digital have equipment to display captioning or audio description. However, almost all other commenters supported a regulation requiring exhibition of movies with captioning and audio description. Significantly, even though the Department did not propose that captioning and audio description be provided at all showings, the vast majority of commenters who discussed this subject advocated that the Department do just that. In addition, most of these commenters stated that such a requirement should be implemented immediately rather than phased in over a five-year period. Industry commenters pointed out that rolling out captioning and audio description at 20 percent per year over a five-year period would be difficult to implement and that they supported a five-year compliance schedule.

III. General Issues

A. Current State of the Technology for Exhibiting Movies With Captioning and Audio Description and Availability of Product

1. Captioning and Audio Description for Analog Movies

It is the Department's understanding, based upon independent research and the comments received in response to the 2010 ANPRM, that because of the major movie theater companies' commitment to the transition to digital cinema, research and investment into ways to deliver closed captioning has shifted away from analog movies to digital cinema. As such, there is only one product currently available on the market for providing closed captions for analog movies: Rear Window® Captioning (Rear Window® or RWC). RWC, when combined with audio description provided by DVS-Theatrical® (DVS), is called MoPix® systems.[19]

Unlike open captions that are burned onto the film itself, Rear Window® captions (and audio description) are generated via a technology that is not physically attached to the film and does not require that a separate copy of the film be made. The Rear Window® and audio-description systems work through a movie theater's digital sound system using Datasat Digital Entertainment's media player with captioning subtitling system (formerly DTS Digital Cinema).[20]

[18] The Department issued four ANPRMs on July 26, 2010, and invited testimony on all four ANPRMs at each public hearing. *See* 75 FR 66054 (Oct. 27, 2010).

[19] The Department is not endorsing any product or company named in this NPRM. The Department is identifying particular companies and products to enable it to provide an understandable and comprehensive discussion of the issues, products, and available technology for captioning and audio description of movies.

[20] Digital sound systems operate independently from analog projectors, which deliver the visual portion of a movie. To exhibit closed captioning and audio description with analog movies, a movie theater needs a digital sound system. Many movie

The Datasat™ player sends the captions to a light-emitting diode (LED) display in the rear of the movie theater. A clear adjustable panel mounted on or near an individual viewer's seat reflects the captions correctly and superimposes them on that panel so that it appears to a Rear Window® user that the captions are on or near the movie image. This technology enables a movie theater that has been equipped with a Rear Window® Captioning system to exhibit any movie that is produced with captions at any showing, without displaying captions to every moviegoer in the theater. Thus, individuals who are deaf or hard of hearing may enjoy movies in a movie theater equipped with such a system alongside those who do not require captioning and who would not see the captions being displayed. Movie theaters can also exhibit movies with open captions for analog movies by using the same Datasat™ system, with a second projector to superimpose the captioned text directly onto the movie screen.

Audio description makes movies more accessible to individuals who are blind or have low vision by providing narrated information about key visual elements of the movie, such as actions, settings, and scene changes. The audio description is sent by the Datasat™ media player to infra-red or FM listening systems, then on to movie patrons wearing headsets.

According to comments from the WGBH National Center for Accessible Media (NCAM), as of mid-2010, MoPix® systems had been installed in more than 400 screens in the United States and Canada.[21] Once a movie theater is equipped with a MoPix® system, captioning and description data are supplied on data disks, which arrive in advance of the film's debut. According to NCAM, virtually every major Hollywood studio participates in captioning and description of their A-title feature analog movies in one form or another, and many of the major exhibition chains, as well as many smaller chains, provide captions and descriptions regularly in some of their theaters.

The Department understands that while the industry is rapidly moving to digital cinema, some theaters, particularly very small independent movie theaters, may continue to exhibit analog movies as long as such a product remains available. The Department also understands that with the transition to digital cinema, a secondary market for closed-captioning equipment for analog movies may develop because some movie theaters may choose not to retain this equipment, thereby making the analog equipment cheaper to acquire.

Question 1a: Availability of Analog Film Prints

The Department is interested in any recent data available about the likelihood that analog film prints will be available after 2015 either from the major studios, from smaller independent studios, or from small independent filmmakers. What is the likelihood that analog film prints will be available in five years? Will analog versions of older movies continue to be available for second or third run showings? How many movies will continue to be produced in both analog and digital formats?

Question 1b: Availability of Movies With Captions and Audio Description

What percentage of currently available analog films has been produced with captions or audio description? How many movies will be produced with captions and audio description in both analog and digital formats? What is the likelihood that existing analog movies that currently do not have captions or audio description will be converted to digital formats and then only the digital format would have those accessibility features? Will those older analog movies that are currently available with captions continue to be available with captions?

Question 1c: Economic Viability of Analog Theaters

How many analog theatres currently show first-run movies? If first-run analog movies are no longer produced, will analog theaters be economically viable and what types of movies would these theaters rely on to generate revenue? How many analog theaters are likely to close as the result of these changes in the market? Will this rule affect the pace by which analog theaters convert to digital cinema? If so, how? Will analog theatres converting to digital cinema convert all screens at the same time?

2. Captioning and Description for Digital Cinema

Since publication of the 2008 NPRM, a significant change has occurred in the industry, both in terms of the technology available for digital cinema and the speed at which movie theaters are converting to digital cinema. With the move to convert to digital cinema systems, the technology and equipment available for these systems has expanded accordingly. Digital cinema, which began to be developed in 2000, consists primarily of a digital server and a digital projector. The content of the digital movie can be distributed digitally, often using a hard drive, optical disks, or satellite.[22] *See, e.g.,* Michael Karagosian, *Accessibility in the Cinema* (June 3, 2010), available at *http://www.mkpe.com/publications/d-cinema/presentations/2010-June_CHHA_Karagosian.pdf* (last visited July 14, 2014). Unlike analog movies, digital cinema does not need splicing after delivery to the movie theater, thereby eliminating the risk of nicks to the film, and does not degrade over time or with repeated use. It also is ''unlocked,'' which means there are no technology-based royalties to be paid for distributing the content. *Id.* According to comments from NCAM, captions and audio description are included in the digital cinema package (DCP). The DCP contains the entire movie in electronic form (images, soundtrack, anti-piracy data, and if provided by the studios, captioning and description). When ordering a DCP, movie theaters have the option to request either an open-captioned or a closed-captioned version of the movie. If an open-captioned version is requested, no other equipment (such as an interface or personal user devices) is necessary in order to display a movie with the captions exhibited.

As digital cinema technology has advanced, the options and methods available for exhibiting movies with captioning and audio description have also expanded. Members of the industry, manufacturers, and other interested parties worked together to ensure interoperability of digital cinema components through standards adopted by the Society of Motion Picture and Television Engineers (SMPTE), so that products that provide captioning and audio description would be compatible with the various digital cinema systems available for purchase and use by movie theaters.[23] For this and other reasons, in

theaters that exhibit analog movies have these systems. Digital sound systems are different from digital cinema, *i.e.,* a movie theater does not need digital cinema to use digital sound.

[21] The WGBH National Center for Accessible Media is a nonprofit that developed MoPix® systems funded in part by a grant from the U.S. Department of Education.

[22] Because digital movies can be provided to movie theaters easily and inexpensively compared to the costs inherent in mailing several large reels of film per analog movie, the cost to distribute digital movies is significantly less for movie studios.

[23] ''Closed caption technology for digital cinema has rapidly moved forward with the successful standardization of SMPTE 430–10 and 430–11 for the SMPTE CSP/RPL closed caption protocol, an Ethernet-based protocol designed for connecting closed caption systems with digital cinema servers.

Continued

digital cinema systems it is much easier and far less costly to exhibit movies with captioning and audio description. For example, unlike analog movies, digital cinema has many sound channels, making it much easier to include audio description. *See* Michael Karagosian, *Accessibility in the Cinema* (June 3, 2010), available at *http://www.mkpe.com/publications/d-cinema/presentations/2010-June_CHHA_Karagosian.pdf* (last visited July 14, 2014). In addition, digital cinema can easily support closed captions, including up to six closed-captioned languages at a time. *Id.* And for closed captions, a standardized output is available that permits the closed captioned product to plug in to any compliant digital system. *Id.*

In terms of equipment needed, it is easier to exhibit movies in digital cinema using open captions because all that is required is that the captions be turned on. No additional equipment (*e.g.,* individual captioning devices) is needed to display open captioned movies. Open captions, like closed captions, are included in the DCP and the movie theater simply requests a DCP with either open or closed captions.

Based upon the Department's research, conversations with manufacturers, and comments received by the Department, several options appear to be available for delivering closed captions in digital films to the movie patron. For example, two manufacturers produce and sell wireless closed-captioned displays that are mounted on a device that the movie patron places in the seat's cup holder. *See* Michael Karagosian, *Update on Digital Cinema Support for Those With Disabilities: April 2013,* available at *http://www.mkpe.com/publications/d-cinema/misc/disabilities_update.php* (last visited July 14, 2014). One system uses a single infra-red transmitter for delivery of both closed captions and audio description. *Id.* A second system uses Wi-Fi technology to transmit closed captions directly from the server to a cup holder display unit. This system does not appear at this time to support audio description. However, according to its manufacturer, audio description can be provided through a third-party vendor system. The Department understands that cup holder displays are already in use in theaters in Canada as well as some theaters in the United States. Eyeglasses that display the text in front of the wearer's eye while watching a movie are also on the market. As of September 2012, Regal Cinema theaters had captioning glasses in use in 200 theaters and announced that it plans to use them in all of its theaters by April 2013. Other companies are also reported to be developing eyeglasses that can display captions. In addition, the Department understands that MoPix's® Rear Window closed-captioned devices work in digital cinema as well as analog. Movie theaters that have installed a captioning system for their analog product can still use that product with digital cinema. MoPix®'s devices are supported by several digital cinema servers directly, although other servers may need to obtain a special interface.[24]

In specialty movie theaters, such as IMAX or other big-screen format presentations, closed-captioning systems for digital cinema also work well, and the captioned data can be fed to the LED panel by a computer that is running special software that synchronizes the caption files to the film.

It is unclear from the comments received by the Department the extent to which 3D movies are currently being provided by studios or distributors with open or closed captioning. Commenters representing both movie theaters and movie studios stated that MPAA member companies are hopeful that technological developments will soon allow closed captioning for 3D version releases. A commenter involved in the development of the Rear Window® captioning system for analog movies stated that it has been tested in feature-length 3D presentations with positive viewer response. The Department's research indicates that both the captioning eyeglasses as well as the cup holder displays can show captions for 3D movies if the movies are provided with captioning. By contrast, the Department understands that the same technology provides audio description for both 2D and 3D movies. One commenter representing the movie theater industry stated that whenever audio description is available for digital 3D movies, it should be treated the same as audio description for film and video displays in other settings.

As with analog movies, the audio description in digital cinema is delivered using a wireless headset or ear phones. Digital cinema audio supports up to 16 channels of audio[25] and the cinema audio formats have two channels reserved for both hearing impaired audio and audio description. *See* Michael Karagosian, *Accessibility in the Cinema* (June 3, 2010), available at *http://www.mkpe.com/publications/d-cinema/presentations/2010-June_CHHA_Karagosian.pdf* (last visited July 14, 2014). Moreover, both the infra-red and FM-audio single-channel systems presently used for assisted listening can be replaced by multi-channel systems that support both assisted listening and audio description.

3. Conversion to Digital Cinema

Despite the economic downturn over the last few years, the movie theater industry is rapidly increasing the number of screens that have converted to digital cinema since publication of the 2008 NPRM. In May 2013, an industry representative testified to Congress that as of that date, 88 percent of indoor movie screens in the United States had converted to digital cinema. *See* Testimony of John Fithian, President and CEO of the National Association of Theater Owners, Before the U.S. Senate Committee on Health, Education, Labor and Pension (May 14, 2013), available at *http://natoonline.org/wp-content/uploads/2013/08/Harkin-Hearing-Testimony-May-2013.pdf* (last visited July 14, 2014).

Starting in the late 2000's, a number of major movie studios entered into agreements to help defray the cost of conversion by paying a consortium of movie theater chains a ''virtual print fee'' of $800 to $1000 per film, per screen until the digital equipment is paid off. *See* Dawn C. Chmielewski, *Major Studios Agree to Back Switch to Digital Projection, Los Angeles Times* (Oct. 2, 2008), available at *http://articles.latimes.com/2008/oct/02/business/fi-studios2* (last visited July 14, 2014). The Department understands that nearly all of these programs have stopped enrolling new members, although the deals continue to be active for those who have already signed up. According to an industry commenter, these digital cinema systems are SMPTE-compliant, which means that all of the captioning and audio-description products on the market—and in development—will be compatible with, and easily integrated into, whatever

The SMPTE CSP/RPL communication protocol is license-free. The wide-spread use of this protocol has allowed multiple closed caption systems to proliferate.'' Michael Karagosian, *Update on Digital Cinema Support for Those With Disabilities: April 2013,* available at *http://www.mkpe.com/publications/d-cinema/misc/disabilities_update.php* (last visited July 14, 2014).

[24] As with all closed-captioning systems available with today's technology, MoPix® also requires use of an individual captioning device by the patron seated in the theater auditorium.

[25] Analog movies support between two and eight channels, depending upon the audio sound format being used by the movie theater. *See* Michael Karagosian, *Accessibility in the Cinema,* (June 3, 2010), available at *http://www.mkpe.com/publications/d-cinema/presentations/2010-June_CHHA_Karagosian.pdf* (last visited July 14, 2014).

digital cinema systems are in use by the various movie theaters. In addition, it has recently been reported that between the conversion to digital and the projected loss of the two major suppliers of film print stock, it is unlikely that any first run films will be available in analog within the next few years, thus furthering the pressure on smaller theaters to convert to digital. *See e.g.,* Gendy Alimurung, *Movie Studios Are Forcing Hollywood to Abandon 35mm Film. But the Consequences of Going Digital Are Vast, and Troubling, LA Weekly* (Apr. 12, 2012), available at *http://www.laweekly.com/2012-04-12/film-tv/35-mm-film-digital-Hollywood* (last visited July 14, 2014); Dawn McCarty & Beth Jinks, *Kodak Files for Bankruptcy as Digital Era Spells End to Film,* Bloomberg (Jan. 19, 2012), available at *http://www.bloomberg.com/news/print/2012-01-19/kodak-photography-pioneer-files-for-bankruptcy-protection-1-.html* (last visited July 14, 2014); *see also* Tim O'Reiley, *Theater Official Optimistic Despite Attendance Slump,* Las Vegas Review-Journal (March 29, 2011) (quoting new MPAA head, former Sen. Christopher Dodd, as predicting that ''films on film will disappear in less than three years''), available at *http://www.reviewjournal.com/business/theater-official-optimistic-despite-attendance-slump* (last visited July 14, 2014).

4. Availability of Movies With Captioning and Audio Description

As stated previously, movie theaters do not provide the captioning and audio description for the movies they exhibit. Movie studios and distributors determine whether to caption and audio describe, what to caption and audio describe, the type of captioning to use, and the content of the captions and audio-description script. In addition, movie studios and distributors assume the costs of captioning and describing movies. Movie studios and distributors would not be required by this proposed regulation to include captioning or audio description in their product, because the mere production and distribution of movies does not make them public accommodations under the ADA. That said, movie studios appear committed to making their movies accessible to individuals who are deaf or hard of hearing or blind or have low vision, and the Department commends their efforts. According to the MPAA, analog movies produced with captioning by member studios in 2010 included virtually all wide-releases.[26] Seventy-six percent of analog movies produced by MPAA member studios were produced with audio description. According to another industry commenter, MPAA member studios distributed 140 films in 2010, captioning 86 percent of their film product. The MPAA, in its comments to the 2010 ANPRM, stated that by the latter part of 2010, the major studios were making captioning and audio description available on some digital movies and had announced that in 2011 almost all theatrical releases in digital format will include closed captioning.[27] In addition, the MPAA stated in its comments that its members intend to significantly increase the number of digital releases with audio description in 2011. No data are publicly available on the number of movies released with captioning and audio description since 2011, but given the current trend, the Department projects that the numbers increased in 2012. One movie theater industry commenter pointed out that while MPAA member studios distributed 140 movies in 2010, the independent studios released 473 films, a majority of which were not captioned or audio described. The number of independent films released can be somewhat deceptive in this context, however, because MPAA member studios distribute 82 percent of the film product in the United States. The larger independent studios, which include Dreamworks, Lionsgate, Summit, The Weinstein Company, and MGM, distribute an additional 14 percent of the domestic product, and the other independent studios distribute the remaining 4 percent of the product domestically. It is unclear how many movies that are captioned and audio described are currently distributed by the independent studios.[28] It is also unclear whether, and what percentage of, movies will be made in digital format for digital cinema by these same independent studios in the future, and what percentage will be captioned and audio described. However, if independent producers distribute their product to television, albeit in analog or digital format, captions must be included under current FCC rules. *See* 47 CFR 79.1.

Despite the array of captioned and described product that is available, there are still a significant number of movie theaters that are not equipped to show movies with closed movie captions and audio description or that only show them at selected showings of particular movies. According to NATO, as of May 2013, at least 53 percent of digital movie screens had the capacity to show movies with closed movie captions or audio description. *See* Testimony of John Fithian, President and CEO of the National Association of Theater Owners, Before the U.S. Senate Committee on Health, Education, Labor and Pension (May 14, 2013), available at *http://natoonline.org/wp-content/uploads/2013/08/Harkin-Hearing-Testimony-May-2013.pdf* (last visited July 14, 2014). Three of the four largest movie theater chains have publicly committed to installing closed captioning and audio description equipment in all of their theaters that have been converted to digital. *See* Press Release, Regal Entertainment Group, Regal Entertainment Group Announces New Forms of Digital Cinema Access (May 4, 2011), available at *http://investor.regmovies.com/phoenix.zhtml?c=222211&p=irol-newsArticle&ID=1559531&highlight* (last visited July 14, 2014); Press Release, Cinemark Holdings, Inc., Cinemark and ALDA Announce Greater Movie Theatre Accessibility for Customers who are Deaf or Hard-of-Hearing (April 26, 2011), available at *http://www.cinemark.com/pressreleasedetail.aspx?node_id=22850* (last visited July 14, 2014); Press Release, Disability Rights Advocates, AMC Theatres and ALDA Announce Greater Accessibility for Deaf or Hard-of-Hearing Guests at All Digital Movie Theatres in California, (Dec. 20, 2011), available at *http://www.dralegal.org/pressroom/press-releases/amc-theatres-and-ALDA-announce-greater-accessibility-for-deaf-or-hard-of* (last visited July 14, 2014).

IV. Section-by-Section Analysis

Section 36.303(g) Movie Captioning and Audio Description—Definitions

Movie Theater. In order to make it clear which facilities are subject to the specific captioning and audio-description requirements set forth in § 36.303(g), the Department is proposing in § 36.303(g)(1)(v), to define the term ''movie theater'' as ''a facility other than a drive-in theater that is used primarily for the purpose of showing movies to the public for a fee.'' Movie theaters

[26] Wide-releases include all films except for those with limited release, documentaries, and similar titles.

[27] This commitment was possible because the interested parties reached agreement upon, and published standards for, SMPTE digital cinema packages.

[28] Representatives from the Independent Film & Television Alliance and from independent studios did not submit comments in response to the 2010 ANPRM.

include all movie theaters that exhibit movies for a fee, except drive-in movie theaters. The term includes movie theaters that exhibit second- and third-run movies as well first-run releases. The term is not a synonym for movie screen. A movie theater can have one or more screens available to show movies in several auditoriums. The term ''movie theater'' does not include facilities that screen movies, such as museums, hotels and resorts, or cruise ships, even if they charge an additional fee, if the facility is not used primarily for the purpose of showing movies for a fee.

Paragraph 36.303(g) is a specific application of the auxiliary aid and service requirement for movie theaters. Such a provision is necessary because of the technological advances in auxiliary aids and services that enable movie theaters to screen movies in a manner that provides effective communication to individuals who are deaf or hard of hearing or blind or have low vision. The Department's title III regulation makes clear that public accommodations that exhibit movies but are not movie theaters, such as museums and amusement parks, must provide effective communication to the public through the provision of auxiliary aids and services, including, where appropriate, captioning and audio description. *See generally* 28 CFR 36.303; 28 CFR part 36, app. B. Many such public accommodations have been providing appropriate auxiliary aids, either through open captions, closed captions, or a mix of the two, and audio description. Even in situations in which the Department identified a need for enforcement action, these public accommodations were willing to comply with the ADA and provide such auxiliary aids and services. *See, e.g.,* Press Release, U.S. Department of Justice, *Settlement Agreement Will Ensure Accessibility at the International Spy Museum in Washington, DC* (June 3, 2006), available at *http://www.justice.gov/opa/pr/2008/June/08-crt-489.html* (last visited July 14, 2014); Press Release, U.S. Department of Justice, Walt Disney World Co. Agrees to Provide Services to Deaf and Hard-of-Hearing Guests (Jan. 17, 1997), available at *http://www.justice.gov/opa/pr/1997/January97/021cr.htm* (last visited July 14, 2014).

Commenters on the 2010 ANPRM advised the Department that the technology does not yet exist to exhibit movies with closed captions or audio description at drive-in movie theaters that have an outdoor patron field that is typically spread across more than eight acres. In addition, these comments indicated that given that there are fewer than 400 drive-in theaters in the United States, it is unlikely that such technology will be developed in the near future. Thus, the Department is proposing to exclude drive-in movie theaters from the definition of movie theater in this rule and defer rulemaking regarding drive-in theaters until such time that the necessary technology for closed captions and audio description for drive-in theaters becomes commercially available.

Question 2: Does the proposed definition of ''movie theater'' adequately describe the movie theaters that should be covered by this regulation? Are there any non-profit movie theaters that would be covered by this definition? How many non-profit movie theaters are there? Should drive-in movie theaters be excluded from the definition of movie theaters at this time? Is there technology under development that might make it possible for drive-in movie theaters to provide closed captions or audio description in the future?

Audio description. For the purposes of this subsection, the Department is proposing to add a definition for ''audio description.'' In proposed § 36.303(g)(1)(i), ''audio description'' is defined as the ''provision of a spoken narration of key visual elements of a visually delivered medium, including, but not limited to, actions, settings, facial expressions, costumes, and scene changes.''

In the Department's July 26, 2010, ANPRM, the Department used the term ''video description'' to define the process and experience whereby individuals who are blind or have low vision are provided with a spoken narrative of key visual elements of a movie, such as actions, settings, facial expressions, costumes, and scene changes. The Department received several comments addressing whether it should continue to use the term ''video description'' or other terms, including ''audio description.'' The majority of commenters addressing this issue supported the use of the term ''audio description,'' stating that audio description has been used since 1981 as the term of art to describe using language to provide access to visual images, and pointing out that the National Endowment for the Arts and the Graphic Artists Guild both use the logo ''AD'' to indicate the availability of audio description. In addition, audio description more appropriately describes the type of auxiliary aid involved, because the process involves providing information that is experienced aurally. In response to these comments, the Department has been persuaded to change the nomenclature for this process to ''audio description.''

Question 3: Should ''audio description'' be the nomenclature adopted in the final rule?

Closed movie captioning. The Department notes that the term ''closed captioning'' is referenced in the examples of auxiliary aids and services in § 36.303(b). That section refers to ''closed captioning'' in the much broader context of auxiliary aids and services that must be provided by a wide range of public accommodations subject to title III. In order to distinguish between the general auxiliary aid and service requirement and the ''closed captioning'' that is required by § 36.303(g)(2), the Department is proposing to define the term ''closed movie captioning'' specifically as it applies to movie theaters. In § 36.303(g)(1)(ii), the Department proposes to define ''closed movie captioning'' as ''the written text of the movie dialogue and other sounds or sound making (*e.g.,* sound effects, music, and the character who is speaking). Closed movie captioning is available only to individuals who request it. Generally, it requires the use of an individual captioning device to deliver the captions to the patron.''

The Department received one comment encouraging it to use the term ''individual captioning'' instead of ''closed captioning'' to refer to the circumstances where captions are received through the use of individual devices. This commenter distinguished between three types of captioning: Open captioning, where the captions are displayed on the screen and cannot be turned off; closed captioning as the term is used in the context of television and video where the captions can be turned on or off, but when they are displayed everyone in the room sees them; and individual captioning systems, where only the individual viewer sees the captions, but they are not displayed to the entire audience. As stated earlier, the Department wishes to avoid confusion between the ''closed captioning'' provided on television and in other venues, and those provided in movie theaters. However, it believes its proposed term ''closed movie captioning'' will address that concern without introducing a term that is wholly different from that currently used by the movie industry and the courts.

Question 4: Should the Department use the term ''closed movie captioning'' to refer to the type of captioning provided by movie theaters to individuals who view the captions at

their seats? Is there a different term that should be used in order to distinguish between the closed captioning referred to in § 36.303(b) and the captioning required for movie theaters in proposed § 36.303(g)(2)?

Individual audio description listening device. In § 36.303(g)(1)(iii), the Department is proposing to define ''individual audio description listening device'' as the individual device that patrons may use at their seats to hear audio description.

Individual captioning device. In § 36.303(g)(1)(iv), the Department is proposing to define ''individual captioning device'' as ''the individual device that patrons may use at their seats to view the closed captions.''

Open movie captioning. The Department notes that the term ''open captioning'' is already referenced in the examples of auxiliary aids and services provided in § 36.303(b). That section refers to ''open movie captioning'' in the much broader context of auxiliary aids and services that must be provided by the wide range of public accommodations subject to title III. In order to distinguish between the general auxiliary aid requirement and the ''open captioning'' that is referenced in § 36.303(g)(2)(ii), the Department is proposing to define the term ''open movie captioning'' specifically as it applies to movie theaters. In § 36.303(g)(1)(vi), the Department proposes to define ''open movie captioning'' as ''the provision of the written text of the movie dialogue and other sounds or sound making in an on-screen text format that is seen by everyone in the theater.''

Question 5: Should the Department use the term ''open movie captioning'' to refer to the type of captioning that is viewed on or near the movie screen by everyone in the movie theater audience? Is there a different term that should be used?

Movie Captioning Coverage

The Department asked nine questions in its 2010 ANPRM on the scope of coverage and how best to frame any regulation requiring exhibiting movies with closed captions and audio description. In that ANPRM, the Department stated it was considering proposing a regulation that would require that 50 percent of movie screens exhibit movies with captioning and audio description and that any such requirement would be phased in over a five-year period. However, after review and analysis of the statutory structure of the ADA, its regulatory requirements and legislative history, and the technological advances since enactment of the ADA, the Department is convinced that any regulation regarding captioning and audio description should be written broadly, like the ADA itself.

In the NPRM, § 36.303(g)(2)(i), the Department proposes to require that ''[a] public accommodation that owns, leases, leases to, or operates a movie theater shall ensure that its auditoriums have the capability to exhibit movies with closed movie captions. In all cases where the movies it intends to exhibit are produced, distributed, or otherwise made available with closed movie captions, the public accommodation shall ensure that it acquires the captioned version of that movie. Movie theaters must then exhibit such movies with closed movie captions available at all scheduled screenings of those movies.'' As discussed below, the Department is proposing to apply this requirement to all digital movie screens in movie theaters and is seeking public comment as to the best approach (*i.e.,* delayed compliance date or deferral) to take with respect to analog movie screens.[29]

The Department is proposing that all movies available with captioning be exhibited with captioning at all times unless doing so would be an undue burden.[30] The primary goals of the ADA are to assure equality of opportunity and full access and participation in our society for individuals with disabilities. 42 U.S.C. 12101. To that end, and as stated previously, the ADA prohibits public accommodations such as movie theaters from affording individuals with disabilities an unequal or lesser service than that offered to other individuals. 42 U.S.C. 12182(b)(1)(A)(ii). The ADA requires public accommodations ''to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently * * * because of the absence of auxiliary aids and services,'' unless the public accommodation can demonstrate that taking such steps would result in a fundamental alteration or undue burden. 42 U.S.C. 12182(b)(2)(A)(iii).

The ADA envisions that effective communication through the provision of appropriate auxiliary aids and services be provided for all of a public accommodation's services and that individuals who are deaf, hard of hearing, blind, or have low vision have access to all of a public accommodation's services, absent a legitimate defense. As such, it is not enough to offer captioned movies (or movies with audio description) for limited movies at limited times, absent a legitimate defense. Rather, such individuals should be able, along with the rest of the population, to attend a movie at any date and time. Based on the information it currently has, the Department does not believe it would be appropriate to propose an across-the-board phase-in of this requirement over five years. Information available to the Department since the publication of the ANPRM makes it clear that the pace of conversion to digital cinema has accelerated rapidly and there are a number of different options available for providing closed movie captions and audio description. Therefore, at this time, the Department does not believe that it is necessary to delay the implementation of the final rule for digital movie screens.

The Department's proposed provision would impose a three-fold requirement upon movie theaters. First, as of the compliance date of this rule, movie theaters must have the capacity to exhibit movies with captions. Second, if a movie is available with captions because it has been produced, distributed, or otherwise made available with captioning, then movie theaters are required to obtain that particular movie in a version with captions, and not in a version without captions. Third, those movie theaters are required to display that movie with the captions to patrons upon request.

[29] Some commenters to the 2010 ANPRM recommended that the Department delay proposing any new rule for at least 24 months as the digital transition continues to progress and new technologies become more widespread. It is already more than 3 years since the ANPRM was published, and the Department declines to delay this rulemaking any further.

[30] A requirement that all movies available with closed captioning be exhibited with closed captioning at all times eliminates other problems inherent in any partial requirement (be it 50 percent of screens in a facility, 50 percent of screens owned by a particular movie theater, number of movies being screened in a particular theater facility, *etc.*) because of issues involving availability of products with captioning and audio description and how movie theaters use auditoriums. Movie theaters negotiate with film distributors regarding which auditoriums in a multiplex theater will show which films. Generally, if a film is expected to be very popular, it will open in the largest auditorium or in several auditoriums within the same complex. As the popularity decreases, the film will be moved from larger auditoriums to smaller auditoriums and from multiple auditoriums to single auditoriums. The timing of such moves will vary from theater to theater and from film to film. Movies also can be rotated between screens throughout the day and evening. The Department's proposal to require 100 percent of screens to meet the requirement ensures that if movies are available with closed captioning, they will be exhibited with closed captioning, thereby maximizing options and choices for patrons with disabilities for all movies, at all times, throughout the country, and eliminates the confusion and lack of access that a partial requirement would create.

The first proposed requirement mandates that movie theaters acquire whatever equipment they need to have the capability to exhibit movies with closed captions. The second proposed requirement mandates that movie theaters select the captioned version of a movie if captions are available for that particular movie. It does not limit the selection or mix of movies that a movie theater may choose. In other words, if a particular movie is not available with captioning (because it has not been produced, distributed, or otherwise made available to the movie theater with captions), then the movie theater is in no way limited or prohibited from acquiring or exhibiting that particular movie. In addition, if a movie is available in both analog and digital formats, but only available with captions in the digital format, then a theater with both digital and analog screens is not required to obtain the captioned digital version if it had intended to show that particular movie on its analog screens. In addition, this proposed rule does not require theaters to add captions to movies that are only available from studios/distributors without captions. Finally, the third proposed requirement only relates to the exhibition of movies obtained with captioning available. The Department understands that decisions about which movies to release with captions or audio description and whether open or closed captions or audio description are provided for a particular movie are decisions made by movie studios and distributors, not movie theaters. The Department notes that obtaining a captioned version of a movie does not require a theater to search for accessible versions of movies because it is the Department's understanding that each movie (either with or without captions) is only available through a single distributor. We have no information that suggests that, in the future, particular movies will be available through multiple distributors and that some distributors may have versions with closed captioning and audio description features and others may not.

Even if that particular movie may be the only movie that a movie theater chooses to exhibit at that time throughout all its auditoriums, there is no obligation under this proposed regulation to exhibit the movie with captioning or audio description if it is not made available with these features. If a movie is available with captioning but not with audio description, than the movie must be exhibited with the captions whenever a request for the captions is made, but the requirement for audio description would not apply to the showing of that movie. This proposed rule would ensure that movie theaters have the capability to exhibit movies that are produced or distributed with captioning and audio description available and that they exhibit such movies with captioning and audio description whenever a request is made for these auxiliary aids.

Comments from NATO on the ANPRM suggested that if the Department issues a regulation requiring captioning then it should not phase-in compliance over five years, but instead should give large, digital theaters five years until they have to comply. NATO also recommended that the Department reduce the required number of screens that need to be accessible to 25 percent and only apply that requirement to movie theaters undergoing digital conversion. NATO also objected to a captioning and audio-description requirement for movie theaters that do not convert to digital, citing uncertainty as to whether many first-run analog movies will be produced in the future, or whether any of them will be distributed with captions and audio description.

As stated earlier, the Department does not believe it appropriate to propose that captioning or audio description be available in less than 100 percent of the movie theaters that exhibit movies that are produced, distributed, or otherwise made available with captioning or audio description. Moreover, there are two reasons that Department does not believe a phased-in compliance schedule is appropriate. First, as discussed in the section on the legal basis for the rule, and as recognized by the Ninth Circuit in the *Harkins* case, movie theaters already have an obligation to provide effective communication to persons with disabilities 100 percent of the time. Second, as the industry acknowledged in its comments on the 2010 ANPRM, a rolling compliance period is difficult to implement given the way the market works—*i.e.,* it is not easy to purchase and install equipment on a set rolling schedule. In addition, as discussed earlier, the Department understands that at least 53 percent of movie screens already have the necessary equipment to show captions and provide audio description and three of the four largest movie theater companies have already committed to make captioning and audio description available at 100 percent of their theaters, as have several smaller movie theater companies.

The Department is proposing that the rule take effect for movie screens that have already converted to digital six months from the publication date of the final rule in the **Federal Register**. The Department believes six months is sufficient time for theaters that have already converted to digital to order and install the necessary equipment to provide captions and audio description, train employees on how to use the equipment and assist patrons in using it and develop and implement processes to ensure that all communications and advertisements intended to inform potential patrons of movie showings provide information regarding the availability of captioning and audio description for each movie.

The rule does not propose a compliance date for analog movie screens. As discussed below, because of the uncertainty about the future of analog theaters, and the future availability of analog film, the Department is seeking public comment on whether it should adopt a four-year delayed compliance date for analog movie screens, or whether it should defer coverage of analog screens and consider additional rulemaking at a later date.

The six-month compliance date applies to digital screens in all movie theaters, including a theater that has both analog and digital screens. For example, if a movie theater has 20 screens and 18 of them are digital and two are analog, the 18 digital screens are all subject to the six-month compliance date. In addition, the NPRM proposes that if an analog screen is converted to digital after the rule's six-month compliance date for digital screens, the newly converted digital screen will then be subject to the rule's requirements within six months from the date the screen is converted to digital.

In addition, from the law's inception in 1990, the statutory language of the ADA has provided flexibility based on cost in specific circumstances. All movie theaters, regardless of size, status of conversion to digital cinema, or economic viability, have available to them the same defense as do all other public accommodations—the individualized and fact-specific undue burden defense. The undue burden defense tailors the analysis to factor in the needs and resources of small businesses and the economic viability of those businesses. Throughout the last two decades movie theaters have been able to assert this defense when facing litigation alleging a failure to provide effective communication to patrons with disabilities. This regulation does not change the availability of this defense or the circumstances under which it can be asserted. It does, however, provide clarity about how movie theaters can

meet their longstanding effective communication obligations under the ADA.

The Department notes that even if a movie theater cannot install the equipment in all of its auditoriums due to an undue financial burden, the movie theater is still obligated to take steps to maximize the movie choices for customers who are deaf or hard of hearing or blind or have low vision. Maximizing the movie choices means that movie theaters should, to the extent possible based on the movie theaters' resources, be able to exhibit as many movies as possible with captioning and audio description in their auditoriums, throughout the day and evening, and on both weekdays and weekends. If, for example, a six-screen movie theater can only afford to install captioning equipment in half of its auditoriums, and it has auditoriums with different capacity, it should install captioning equipment in large, medium, and small auditoriums. This distribution of equipment would permit exhibition of different types of movies, as blockbusters generally are shown in larger auditoriums first and smaller budget movies or older movies may be shown only in medium or small auditoriums.[31]

Question 6: Consistent with President Obama's Memorandum issued on January 18, 2011, on regulatory flexibility, small business, and job creation, the Department invites comment on ways to tailor this regulation to reduce unnecessary regulatory burdens on small businesses.[32] For example: Should the Department have a different compliance schedule or different requirements for digital or analog theaters that have annual receipts below a certain threshold? If so, what should the schedule, requirements, or financial threshold be? Or, should the final rule have a different compliance schedule or requirements for single-screen or miniplex analog or digital theaters? Will all mega and multiplex theaters have converted to digital by the time the final rule goes into effect? Is a four-year compliance date reasonable for those screens that will remain analog? Please provide information to support your answer. Should the Department adopt a different compliance schedule or different requirements for nonprofit movie theaters? The Department invites comment on these alternatives and any other ways in which the final rule could be tailored to appropriately minimize costs on small theaters.

Question 7: Is the proposed six-month compliance date for digital screens a reasonable timeframe to comply with the rule? Is six months enough time to order, install, and gain familiarity using the necessary equipment; train staff so that they can meaningfully assist patrons; and meet the notice requirement of the proposed rule? Will manufacturers have the capacity to provide the necessary equipment for captioning and audio description as of the six-month proposed compliance date of this rule for digital movie screens? If the proposed six-month date is not reasonable, what should the compliance date be and why? Please provide specific examples, data, or explanation in support of your responses.

Analog Movie Screens

Based on information currently available, it appears likely that few, if any, analog movies will continue to be made by the major movie studios and possibly by the independent studios as well. *See* previous discussion. It is unclear to the Department, however, whether those analog movies that continue to be made will be produced with captions and audio description. Thus, it could be that even if analog theaters were to have the capability of showing movies with captions and audio description, there may not be any movies for them to show with those accessibility features. It is also unclear how many, if any, analog theaters will continue to be viable within the next few years. The Department has asked for public comment on the future of analog theaters, analog movie production in general, and analog movies with accessible features. Based on the information available to the Department at the time it drafts the final rule, the Department will decide whether it is appropriate to just delay compliance for analog screens in movie theater auditoriums in order to allow sufficient time to comply with the specific requirements of the rule or defer applying these specific requirements altogether until such time that the Department, in light of available information, deems it appropriate to engage in further rulemaking on this subject. The Department is interested in public comment on whether there is a reasonable basis for deferring the application of this rule to movie theater auditoriums with analog screens or whether it should include an extended compliance date.

Question 8: Should the Department adopt a four-year compliance date for analog movie screens (Option 1) or should it defer application of the rule's requirements to analog screens for now and consider additional rulemaking with respect to analog screens at a later date (Option 2)? Commenters are encouraged to provide information to support their recommendation. Open Captioning (or Other Technologies) as an Option for Compliance

[31] Existing □ 36.303(g) states that ''[i]f provision of a particular auxiliary aid or service by a public accommodation would result * * * in an undue burden * * * the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in * * * such a burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.''

[32] Memorandum for the Heads of Executive Departments and Agencies, Regulatory Flexibility, Small Business, and Job Creation, 76 FR 3827 (Jan. 18, 2011).

In Question 9 of the 2010 ANPRM, the Department asked whether it should give movie theaters the discretion to exhibit movies with open captions should they so desire, as an alternate method of achieving compliance with a captioning regulation. Many of the commenters who addressed this issue, including those from the industry, supported this option.[33] The Department decided to include this option in the proposed regulation as an example of an alternative means of meeting the movie theaters' obligation to provide effective communication to patrons who are deaf or hard of hearing but in keeping with the ADA's legislative history, we are making it clear that the ADA does not require movie theaters to use open captions as a means of providing effective communication.[34] In the NPRM, § 36.303(g)(2)(ii) states that ''[m]ovie theaters may meet their obligation to provide captions to persons with disabilities through use of a different technology, such as open movie captioning, so long as the communication provided is as effective as that provided to movie patrons without disabilities. Open movie captioning at some or all showings of a movie is never required as a means of compliance with this section, even if it is an undue burden for a theater to exhibit movies with closed movie captioning in an auditorium.'' [35]

The Department is aware, both from comments received from the industry and from some individuals, that open captions may reduce the amount of enjoyment experienced by people who do not need captioning. For those movie theaters that elect to meet these requirements through the exhibition of movies with open captioning, in whole or in part, the movie theaters may elect to turn on the open captions only after a timely request has been made for captions. For this approach to be effective, movie theaters should clearly and conspicuously advertise at the ticket offices and at the doors to each auditorium the process, procedures, and time periods for making captioning requests.

Question 9: Do the alternative provisions regarding when and how to employ open movie captions strike an appropriate balance? Should the Department define what a timely request is in this context? Has the Department adequately addressed the possibility that new technology may develop that can be used to provide effective communication at movie theaters?

Individual Captioning Devices

A commenter from a disability advocacy organization encouraged the Department to specify the number of individual captioning devices that must be made available at each movie theater, pointing out that groups of persons who are deaf or hard of hearing should be able to attend movies at the same time and have sufficient individual captioning devices available to enable them to enjoy the movie at the time of their choice. A commenter from the movie theater industry recommended that the Department require only one individual captioning device per movie screen equipped to display digital cinema. The Department already has a requirement for a specific number of assistive listening receivers that must be made available at each movie theater for persons who need amplification of sound during a movie. *See* table 219.3 in the 2010 ADA Standards for Accessible Design (2010 Standards).[36] Adding a requirement for a particular number of individual captioning devices would be consistent with that approach and is necessary to ensure that patrons who are deaf and hard of hearing are provided with effective communication.

In the NPRM, the Department is proposing scoping for the required number of individual captioning devices in numbers that approximate about half the number of assistive listening receivers already required for assembly areas by the 2010 Standards. Proposed § 36.303(g)(2)(iii)(A) states, ''[a] public accommodation that owns, leases, or leases to, or operates a movie theater shall provide individual captioning devices in accordance with the following Table. This requirement does not apply to movie theaters that elect to exhibit all movies at all times at that facility with open movie captioning.''

Capacity of seating in movie theater	Minimum required number of individual captioning devices
100 or less	2.
101 to 200	2 plus 1 per 50 seats over 100 seats or a fraction thereof.
201 to 500	4 plus 1 per 50 seats over 200 seats or a fraction thereof.
501 to 1000	10 plus 1 per 75 seats over 500 seats or a fraction thereof.
1001 to 2000	18 plus 1 per 100 seats over 1000 seats or a fraction thereof.
2001 and over	28 plus 1 per 200 seats over 2000 seats or a fraction thereof.

This table's proposed requirements are based on the total number of seats for all screens in the movie theater. If a movie theater has more than one screen, the number of seats are combined together to determine the required number of individual captioning devices.

The Department believes that its proposed numbers are sufficient because not every individual with hearing loss requires the use of captioning in order to enjoy movies. There are many individuals with mild to moderate hearing loss who can use the amplification provided by assistive listening receivers, although there are some individuals with moderate hearing loss for whom the assistive listening receivers are not effective. *See* discussion *supra.* The Department does not agree with the movie theater industry's recommendation that it should require each movie theater to have only one individual captioning device available for each auditorium

[33] A number of commenters advocated for the Department to require open captioning exclusively, arguing that it is much more effective and cheaper than closed captioning.

[34] ''Open captioning * * * of feature films playing in movie theaters, is not required by this legislation. Filmmakers are, however, encouraged to produce and distribute open-captioned versions of films, and theaters are encouraged to have at least some pre-announced screenings of a captioned version of feature films.'' H.R. Rep. No. 101–485, pt. 2, at 108 (1990); S. Rep. No. 101–116, at 64 (1989).

[35] With open movie captioning, there is no need for additional equipment to display the captions and, therefore, there is no additional cost to the theaters. For digital cinema, the movie theater simply selects the open caption option from its digital menu and the open captions appear on the movie screen for that showing only. For analog films, the movie theater would order the version with open movie captions, if available, and just display the movie without need for any additional equipment.

[36] 28 CFR 36.104 (title III) (defining the ''2010 Standards'' as the requirements set forth in appendices B and D to 36 CFR part 1191 and the requirements contained in subpart D of 28 CFR part 36). The 2010 Standards can be found at *http://www.ada.gov/2010ADAstandards_index.htm* (last visited July 14, 2014).

that has captioning equipment installed because it does not believe that this would be a sufficient number given the number of persons with moderate and severe hearing loss or who are profoundly deaf who would benefit from closed captioning. Moreover, the Department believes that it is more appropriate to base the scoping for individual captioning devices on the number of seats at the movie theater, rather than the number of movie screens, because the number of devices should be proportionate to the number of individuals who can attend the movie. Under the Department's formula, a movie theater that had five screens in auditoriums that could accommodate a total of 3000 people would need to have more devices available than a movie theater that also had five screens but in auditoriums that could only accommodate a total of 1000 people. This approach is consistent with the way assistive listening receivers are scoped in the current regulation.

Industry commenters asserted that even in those auditoriums that have installed Rear Window® Captioning systems, industry data indicates that there are few requests to use them. Based on the comments received in response to its 2010 ANPRM and its independent research, the Department has concluded that the availability of captioning in the United States is limited, and it is therefore not appropriate to base conclusions about potential use of individual captioning devices on current usage data at those few auditoriums that offer closed captioning on a limited basis.[37] The Department believes that the demand for individual captioning devices will be much greater than one device per auditorium once movies are regularly and uniformly exhibited with captioning and the availability of captioning becomes widely known. This is especially true given the anticipated increase in the number of deaf and hard of hearing individuals in the United States that will come with the aging of the U.S. population.

The Department received numerous comments from advocacy organizations and deaf and hard of hearing individuals indicating that they were unable to attend the few movies currently offered with closed captioning because they were not publicized, were usually scheduled a few times a week at off hours (often in the middle of the weekday), or were only scheduled for one movie at a time, despite the variety of movies that are shown at any one time at a movie theater. These commenters stated that if captioned movies were available to them for all movies at all times, they would then become regular moviegoers in the same manner as persons who are not deaf or hard of hearing. These commenters included deaf and hard of hearing parents of children who wished to attend movies, teenagers who wished to attend movies with their friends on the weekends at peak times, and people who work during the day who wished to attend movies during evening hours and on weekends. Many of the deaf and hard of hearing individuals who testified at the Department's three public hearings or who submitted comments stressed that they have not been to a movie for many years either because of the lack of availability of captioning or because when they tried to see films advertised as having captioning they arrived at the movie theater only to find that the staff did not know where the individual captioning devices were or how to turn on the captioning, or the individual devices themselves malfunctioned.

Question 10: The Department seeks public comment on its proposed scoping for individual captioning devices. If the scoping is not correct, what are the minimum number of individual captioning devices that should be available at a movie theater? Please provide the basis for alternative suggestions. If the required number of individual captioning devices is linked to the number of seats in the movie theater facility, should the percentage decrease for very large facilities with multiple screens? What should the threshold(s) be for this calculation? Should the Department consider different scoping approaches for small theaters? How so and why? Are there alternative scoping approaches that the Department should consider to address variability in demand for the devices across theaters? If so, please describe such alternatives in as much detail as possible.

Standards for Individual Captioning Devices

The Department received a number of comments for specific performance standards for individual captioning devices. These commenters wanted the Department to ensure that the text that is exhibited on these devices is readable with good contrast and good text size, that it be available at a reasonable height in relation to the movie screen, that the devices be easily used by patrons who are deaf or hard of hearing, and that they be properly maintained. The Department has considered these comments and is proposing in the NPRM, at § 36.303(g)(2)(ii)(B), that ''[i]n order to provide effective communication, individual captioning devices must: (*1*) Be adjustable so that the captions can be viewed as if they are on or near the movie screen; (*2*) be available to patrons in a timely manner; (*3*) provide clear, sharp images in order to ensure readability; and (*4*) be properly maintained and be easily usable by the patron.''

The Department received a number of comments expressing concern that seat location can have an impact on the ability to read closed captions. Those commenters recommended that the Department require movie theaters to reserve seats in the center of the auditorium to persons using individual captioning devices. In contrast, an industry commenter stated that the ability to read the captions provided by the new closed-caption systems for digital cinema has been reported to be equally good throughout the movie theater auditorium and that the system currently in use for analog has reportedly been improved for use with digital cinema.

The Department has decided not to propose any kind of reserved seating provision in the regulation at this point because it believes that its proposed performance standards will ensure the usability of individual captioning devices. In addition, seating at movie theaters generally is on a first-come, first-served basis, and patrons know to come early if they want to sit in the ''sweet spot'' or other desirable seats in the auditorium.[38] While movie theaters may select whatever captioning equipment they want to deliver closed captions to their patrons, they must provide effective communication to individuals with disabilities who are deaf, hard of hearing, blind, or have low vision. The proposed performance standards should assist movie theaters in meeting that requirement.

Question 11: Has the Department adequately described performance standards for individual captioning devices that deliver closed captions to patrons? How should the standards address text size that is displayed on the devices?

[37] When the Department adopted standards for physical accessibility in public accommodations, the Department similarly did not base its scoping on how many persons with disabilities accessed inaccessible facilities.

[38] If a movie theater adopts an all-reserved seating policy, it would be advisable to hold back certain seats for individuals who need captioning (or audio description) if the captioning (or audio description) does not work well throughout the auditorium or works better in specific areas of the auditorium.

Audio Description

Coverage. In § 36.303(g)(3)(ii) of the NPRM, the Department is proposing that a public accommodation that owns, leases, leases to, or operates a movie theater shall ensure that its auditoriums have the capability to exhibit movies with audio description and in all cases where the movies it intends to exhibit are produced, distributed, or otherwise made available with audio description, the public accommodation shall ensure that it exhibits such movies with audio description at all scheduled screenings of those movies. This requirement is comparable to the requirement for exhibition of movies with closed captioning at proposed § 36.303(g)(2). In addition, with respect to digital screens, the Department is proposing the same six-month compliance date for the provision of audio description at § 36.303(g)(3)(i) as it is for movie captioning. With respect to analog screens, the Department is seeking public comment on whether to adopt a four-year delayed compliance date for the provision of audio description or defer new requirements for analog screens to provide audio description for now and consider additional rulemaking at a later date.

The Department received virtually no comments objecting to a requirement for the exhibition of movies with audio description when such movies are available to movie theaters with audio description. The overwhelming number of commenters addressing audio description indicated that they believed it should be available at all movies at all times. However, while industry commenters agreed that audio description should be available, they suggested limiting any requirement for exhibiting movies with audio description to 25 percent of those auditoriums that have converted to digital cinema. A 25 percent requirement would significantly limit the availability of movies with audio description across the country.

As discussed with respect to proposed § 36.303(g)(2) (movie captioning), the Department believes that given the availability of audio-description technology, and in light of the purpose and goals of the ADA and its statutory and regulatory framework, the ADA requires nothing less than full access to audio-described movies at all times such movies are exhibited, whenever such movies are produced, distributed, or otherwise made available to movie theaters. The primary goals of the ADA are to assure equality of opportunity and full access and participation in our society for individuals with disabilities. 42 U.S.C. 12101. The ADA requires public accommodations to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently because of the absence of auxiliary aids and services unless the public accommodation can demonstrate that taking such steps would result in a fundamental alteration or undue burden. 42 U.S.C. 12182(b)(2)(A)(iii).

Individual audio-description listening devices. In order to ensure that individuals who are blind or have low vision have access to audio-described movies when such movies are available in a movie theater, the theater needs to provide a reasonable number of audio-description listening devices for individual use. The comments received and the Department's research indicate that many of the assistive listening receivers currently in use in the United States have two channels, one of which is needed for amplified sound, and the other that could be used for audio description. The NPRM proposes at § 36.303(g)(3)(ii)(B) that a theater may meet its obligation to provide individual captioning devices if the receivers it uses to meet its obligations to provide assistive listening systems in accordance with the requirements in table 219.3 of the 2010 Standards have at least two channels, one of which can be available for transmission of audio description. For those theaters that do not have two-channel assistive listening receivers, the Department is proposing in § 36.303(g)(3)(ii)(A) to require minimal scoping of one individual audio-description listening device per auditorium, with a minimum of two devices per theater. This proposal is relatively consistent with the recommendations of at least one industry commenter on the 2010 ANPRM, who asserted that the Department should limit any requirement for individual audio-description listening devices to one receiver per auditorium. In any event, the Department believes that because many movie theaters already have two channel assistive listening receivers that they use to meet their existing requirements under the 2010 Standards, the proposed scoping will not require many movie theaters to buy additional equipment.

The Department received comments and heard testimony from individuals and organizations representing individuals who are blind and have low vision stating that they do not attend movies because of the lack of audio description, but would begin going to movies once audio description is readily available.

Question 12: How many devices capable of transmitting audio description to individuals should each movie theater have on hand for use by patrons who are blind or have low vision? Should the number of individual audio-description listening devices be tied to the number of seats in each auditorium or other location with a movie screen? Should the number of individual audio-description listening devices be tied to the number of seats in the theater facility as a whole? Please provide the basis for your comment. How many movie theaters have two-channel receivers that can be used to provide audio description? How many movie theaters will need to buy additional individual audio description listening devices? How much do audio description listening devices that meet the requirements of this proposed rule cost?

For some small movie theaters, it may be an undue burden to purchase the equipment needed to exhibit movies with closed captioning and audio description and meet the other requirements of the rule. Determining whether compliance with the requirements of this rule will result in an undue burden, however, requires the individualized, fact-specific inquiry and analysis discussed previously. In some circumstances, movie theaters may incur a cost to determine whether and to what extent compliance with the rule would result in an undue burden. Such costs may include the time to determine how to comply with the rule's requirements; the time to gather, compile, and review financial records; and the time to obtain estimates of the cost of compliance. The Department lacks information necessary for estimating the time and other costs a theater would incur to determine whether compliance would result in an undue burden and the extent to which this rule would increase movie theaters' legitimate use of the undue burden analysis compared to the status quo. This information, however, would be important for analyzing at the final rule stage the incremental effect of the rule and for analyzing regulatory alternatives, particularly for small theaters.

The Department notes that many small businesses will be able to defray the costs of compliance with this rule if they qualify for a special IRS tax credit that is intended to defray the costs of providing access to persons with disabilities in accordance with the requirements of the ADA. Section 44 of the Internal Revenue Code of 1986

allows eligible businesses a tax credit of 50 percent of the cost of ''eligible access expenditures,'' defined as amounts paid or incurred ''(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities, * * * (D) to acquire or modify equipment or devices for individuals with disabilities, or (E) to provide other similar services, modifications, materials, or equipment.'' 26 U.S.C. 44(c)(2). This tax credit is available to businesses with gross receipts of less than one million dollars each year or that have 30 or fewer full-time employees. *See* 26 U.S.C. 44(b). The Department believes that providing captioning and audio description to meet the longstanding obligation to provide effective communication under the ADA falls within this tax code provision.

Question 13: The Department invites comments on the additional time it will take and other possible costs movie theaters would incur to determine whether compliance with the rule would constitute an undue burden. What kinds of costs are involved? How much time would a theater spend determining how to comply with the rule; gathering, compiling, and reviewing financial records; and estimating the cost of compliance? Would small theaters have professionals such as accountants or lawyers review their financial records? What information should the Department use to estimate the per hour cost of the time movie theaters spend undertaking these activities? How might the Department develop an estimate of the average time and cost required to determine whether full compliance would constitute an undue burden? To what extent would this rule increase movie theaters' reliance on the undue burden analysis compared to the status quo? What characteristics of small theaters would make it more likely that it would be an undue burden to comply with the rule? Are there empirical studies or other credible information available for estimating the time and cost for a theater to make a legitimate determination that compliance would constitute an undue burden? The Department is interested in comments in response to these questions from the public in general, but particularly from small movie theater owners and operators and from other small businesses covered by title III of the ADA with experience in determining whether it is an undue burden to meet their effective communication obligation.

Notice Requirement

The Department believes that it is essential that movie theaters provide adequate notice to patrons of the availability of captioned and audio-described movies. In the 2010 ANPRM, in Question 18, the Department requested public comment relating to the necessity of a requirement for providing notice about the availability of captioned and audio-described movies and the scope of such a requirement. The Department received numerous comments in response to this question. The vast majority of commenters supported a notice requirement that included provisions for notice in the range of communications and media utilized by movie theaters to advertise their films. Several commenters recommended that the Department require a uniform system of labeling movies as having open captioning (OC), closed captioning (CC), or audio description (AD). Other commenters stated that they believed the form of notice should be left to the discretion of movie theaters. Many commenters encouraged the Department to ensure that movie listings provided over the phone include this information, so that patrons who are blind and have low vision and who do not utilize Web-based or print media can find out which movies carry audio description. Industry commenters noted that while the industry agrees that providing notice of captioning and audio description is important, movie theaters do not have control over the information provided on third-party Web sites that provide show time information and that sell tickets. These same commenters indicated that they have been working with these Web sites to voluntarily provide accurate information about current screenings of captioned and audio-described movies. Many commenters noted that if the Department adopted a requirement that all movies be shown with captioning and audio description, the need for notice would disappear, since patrons could assume that all movies would be accessible to them.

After considering these comments, the Department has decided to propose a requirement for provision of notice to patrons that covers all types of communications and advertisements provided by movie theaters, but does not require a specific form of notification. Proposed § 36.303(g)(5) states the following: ''movie theaters shall ensure that communications and advertisements intended to inform potential patrons of movie showings and times, that are provided by the theaters through Web sites, posters, marquees, newspapers, telephone, and other forms of communication, shall provide information regarding the availability of captioning and audio description for each movie.'' Even though the Department has proposed a 100 percent requirement, it will still be necessary to provide notice regarding which movies have captions and audio description because not all movies will be available to movie theaters with captions or audio description. The Department notes that third parties are not liable under the ADA when they publish information about movies if they fail to include information about the availability of captioning and audio description at movie theaters.

Question 14: It is the Department's view that the cost of the proposed requirement for theaters to provide notice indicating which screenings will be captioned or audio-described is de minimus. The Department requests comments on this view. Specifically, how much will it cost theaters to provide information regarding the availability of captioning and audio description for each movie and to specify whether open movie captions or closed movie captions will be provided for each particular showing and time? The Department understands that this cost may vary depending on the type of communication or advertisement, and so we request that commenters specify the type of communication or advertisement along with their cost estimate. In addition, how many times in a given year do theaters provide communications and advertisements that would trigger this proposed requirement? The Department understands that this will likely vary depending on how many screens a theater has, and so we request theater commenters to specify how many screens they operate in their response to this question. Because the rule would require 100 percent of movies available with captions and audio description to be shown with these accessibility features, should the Department permit theaters to indicate those movies that do not have these features rather than indicating those that have these features? Would this approach have an effect on the cost of providing notice? If so, how would it affect the cost?

Capability to Operate Captioning and Audio Description Equipment

The Department received a significant number of comments from individuals with disabilities and groups representing persons who are deaf or hard of hearing and who are blind or have low vision strongly encouraging

the Department to include a requirement that staff at movie theaters know how to operate captioning and audio description equipment and be able to communicate about the use of individual devices with patrons. These commenters stated that on numerous occasions when they attempted to go to a movie advertised as having captioning or audio description, there was no staff available who knew where the individual captioning devices were kept or how to turn on the captioning or audio description for the movie. Many of these individuals indicated they were unable to experience the movie fully because of the lack of trained personnel, even if the auditorium was properly equipped and the movie was actually available with captioning or audio description. Industry commenters agreed that staff should be knowledgeable in the use of equipment but asserted that training in the use of all equipment in a movie theater was standard practice, and therefore, such a requirement was not necessary.

Having considered these comments, the Department has decided to include in the NPRM proposed § 36.303(g)(6), which states, ''movie theaters must ensure that there be at least one individual on location at each facility available to assist patrons seeking these services at all times when a captioned or audio-described movie is shown. Such assistance includes the ability to:

(i) Operate all captioning and audio-description equipment;

(ii) Locate all necessary equipment that is stored and quickly activate the equipment and any other ancillary equipment or systems required for the use of the devices; and

(iii) Communicate effectively with individuals who are deaf or hard of hearing and blind or have low vision regarding the uses of, and potential problems with, the equipment for such captioning or audio description.''

The Department believes that the requirement in § 36.303(g)(6)(iii) is necessary to ensure effective communication for persons who are deaf or hard of hearing and blind or have low vision so that they can have equal access to movie theaters. The Department notes, however, that providing effective communication about the availability of captioning would not require that the theater hire a sign language interpreter. Communication with a person who is deaf or hard of hearing about the availability of captioning or how to use the equipment involves a short and relatively simple conversation, and therefore, can easily be provided through signage, instruction guides, and exchange of written notes.

Question 15: How much additional time beyond the normal time movie theaters spend training staff would be needed to incorporate instruction in the operation and maintenance of the equipment for captioning or audio description? How much additional time do theaters anticipate spending on assisting patrons in using the captioning and audio description devices? How should the Department estimate the value of the additional time theater personnel would spend on assisting patrons in using the captioning and audio description devices? Would that additional cost be borne by the theaters, and if so, how?

V. Other Issues

Several commenters asked the Department to include a requirement that movie theaters maintain all equipment needed to provide captioning and audio description. The Department notes that § 36.211 of the title III regulation already requires that public accommodations ''maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.'' The Department does not believe a separate requirement is necessary for equipment needed to provide captioning and audio description.

VI. Regulatory Process Matters

A. Executive Orders 13563 and 12866—Summary of Initial Regulatory Assessment

1. Background

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

In keeping with Executive Order 12866 the Department has evaluated this proposed rule to assess whether it would likely ''[h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' E.O. 12866, § 3(f)(1). The Department's Initial RA shows that this proposed regulation does not represent an economically ''significant'' regulatory action within the meaning of Executive Order 12866. *See* E.O. 12866, §§ 3(f)(1), 6(a)(3)(C). The Department's full Initial RA can be found in the docket for this proposed rule at *http://www.Regulations.gov.*

2. Costs—Summary of Likely Economic Impact

The Initial RA provides estimates of the total cost of the rule under Option 1 (a six-month compliance date for digital screens and a four-year compliance date for analog screens) and Option 2 (a six-month compliance date for digital screens and a deferral of new regulatory requirements on analog screens) over a 15-year time horizon. For Option 1, we estimate that the cost of the rule will range from $177.8 million to $225.9 million when using a 7 percent discount rate, and from $219.0 million to $275.7 million when using a 3 percent discount rate. For Option 2, we estimate that the cost of the rule will range from $138.1 million to $186.2 million when using a 7 percent discount rate, and from $169.3 million to $226.0 million when using a 3 percent discount rate.

The range of cost estimates for both options depends on the assumptions used regarding the extent to which theaters are or soon will be providing closed movie captioning and audio description as proposed in this rule, but independently of this rulemaking. This Initial RA estimates costs using three different baselines due to a lack of information regarding the extent to which theaters are already providing captioning and audio description as proposed in this rule. Under Option 1, each baseline assumes that 2 percent of analog theaters currently meet the requirements of this proposed rule. Under Option 2, the baselines do not make assumptions about analog screens because the rule would defer requirements on such screens to future rulemaking. *See* Initial RA section 4 for details.

- *Baseline 1* (One Screen Per-Theater)—This baseline assumes that on average, every movie theater with digital screens has one screen that is captioning enabled [39] (based on an assumption of at

[39] The three baselines described in this section use the term ''captioning enabled.'' This term refers to the extent to which movie theaters and movie screens currently have the hardware and captioning devices needed to comply with this NPRM. Each baseline includes assumptions for what this term means, and those assumptions can be found in the initial regulatory impact analysis that accompanies this NPRM.

least some compliance with the existing ADA requirements that public accommodations provide effective communication to persons with hearing and vision disabilities). This assumption leads to an estimate of about 13 percent of all digital screens having captioning capabilities. For Option 1, this baseline also assumes that 2 percent of analog screens are captioning enabled.

• *Baseline 2* (Litigation-Based)—This baseline is derived using available data regarding movie theater companies that are now providing captioning and that have been involved in recent litigation challenging their failure to comply with existing ADA effective communication requirements. This baseline assumes that 42 percent of digital screens are captioning enabled. For Option 1, this baseline also assumes that 2 percent of analog screens are captioning enabled.

• *Baseline 3* (2013 NATO Survey-Based)—This baseline uses data provided in testimony by officials from the NATO before Congress in May 2013, in which 53 percent of digital screens were described as already captioning enabled. For Option 1, this baseline also assumes that 2 percent of analog screens are captioning enabled.

Costs are estimated over a 15-year period, beginning with the year in which the rule becomes effective (assumed to be 2015). For both options, costs are estimated for theaters with digital screens beginning in the first year after publication of the final rule (2015). For Option 1, costs are estimated for theaters with analog screens beginning in the fourth year after publication of the final rule (2018).

The estimated costs primarily consist of the following: (1) The purchase of hardware and software to send the captions to users' individual devices; (2) the purchase of individual devices as per the scoping requirements specified in the rule; (3) periodic costs to replace hardware, software, and devices; (4) annual operations and maintenance costs to cover storage, management, staff training, and other recurring costs; (5) any additional hardware costs to transmit audio description to individual devices; and (6) any additional costs associated with the purchase of additional of individual audio-description listening devices. The costs do not include the costs to theaters to convert their screens from analog to digital, because this rule does not require any movie theater to convert to digital cinema, and doing so is not necessary to comply with the proposed requirements.

ESTIMATED COSTS UNDER OPTION 1

[2015 Dollars, 15-year time horizon]

Discount rate (%)	Under baseline 1 assumptions—one screen per-theater (millions $)	Under baseline 2 assumptions—litigation-based (millions $)	Under baseline 3 assumptions—NATO survey based (millions $)
7	$225.9	$191.9	$177.8
3	275.7	235.6	219.0

ESTIMATED COSTS UNDER OPTION 2

[2015 Dollars, 15-year time horizon]

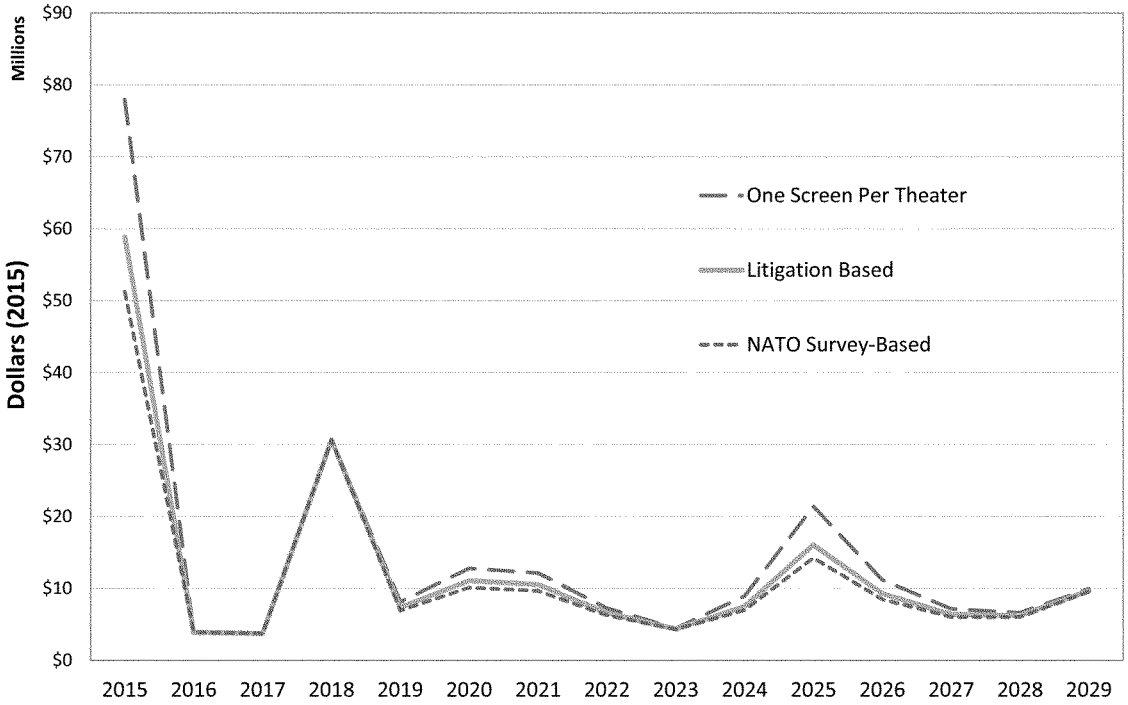
Discount rate (%)	Under baseline 1 assumptions—one screen per-theater (millions $)	Under baseline 2 assumptions—litigation-based (millions $)	Under baseline 3 assumptions—NATO survey based (millions $)
7	$186.2	$152.2	$138.1
3	226.0	186.0	169.3

Under Option 1, the estimated annualized costs of the proposed regulation under each of the three baseline scenarios range from $19.5 million to $24.8 million when using a 7 percent discount rate, and from $18.3 million to $23.1 million when using a 3 percent discount rate. Under Option 2, the estimated annualized costs of the proposed regulation under each of the three baseline scenarios range from $15.2 million to $20.4 million when using a 7 percent discount rate, and from $14.2 million to $18.9 million when using a 3 percent discount rate.[40]

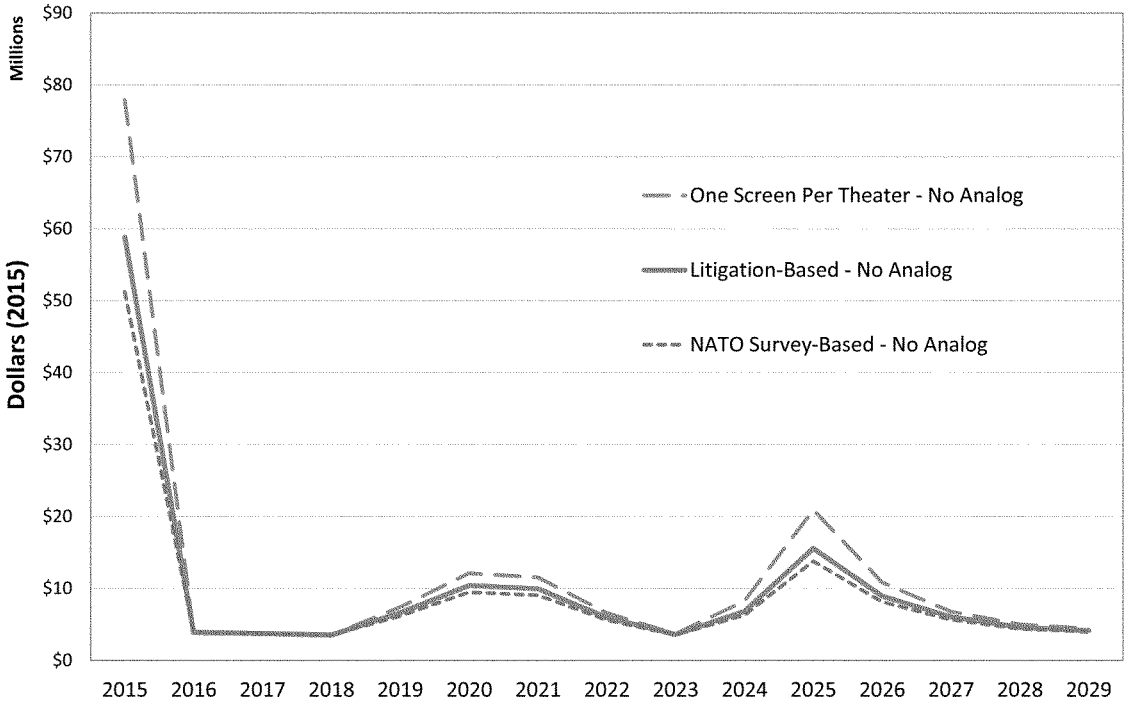
The Initial RA shows that estimated annual costs for this proposed rule will not exceed $100 million in any year under any of three baseline scenarios, irrespective of which option the Department selects for analog screens. Annual costs for each year during the 15-year expected term of the proposed regulation are depicted in the following figures:

[40] Annualized costs were calculated in a Microsoft Excel model using the PMT function (– *PMT (discount rate, years of analysis, present value of total costs)*).

Annual Costs of Rule Under Option 1, Discounted at 7 Percent



Annual Costs of Rule Under Option 2, Discounted at 7 Percent



Because movie theater complexes vary greatly by number of screens, which significantly impacts overall costs per facility, the analysis breaks the movie exhibition industry into four theater types based on size—Megaplexes (16 or more screens), Multiplexes (8–15 screens), Miniplexes (2–7 screens), and Single Screen Theaters—and by digital or analog system. Per-facility costs were then calculated for each theater type. The largest costs per year for any single movie theater would occur in the first year due to the purchase of necessary equipment. The first year's costs for digital Megaplex theaters are estimated to total $38,547, while comparable costs for digital single screen theaters would total $3,198.[41]

[41] Unless a dollar figure in the text or the tables specifically identifies a particular baseline, the default baseline for general dollar figures uses Baseline 1.

PER DIGITAL THEATER INITIAL CAPITAL COSTS FOR CAPTIONING AND AUDIO DESCRIPTION EQUIPMENT

[Hardware, software and devices, 2015 dollars *]

Digital theater type/size	Per-theater initial capital costs (using Doremi technology for movies in digital format)	Per-theater initial capital costs (using USL technology for movies in digital format)	Average initial capital costs for digital theater (average of different technology)
Megaplex	$40,540	$36,554	$38,547
Multiplex	27,880	25,798	26,839
Miniplex	10,920	10,252	10,586
Single Screen	3,285	3,111	3,198

Note: These initial capital costs include the costs to purchase and install: (1) Captioning hardware and software (one per screen); (2) individual devices for captioning (ranging from 4 for Single Screens to 34 for Megaplexes); (3) additional hardware, if needed, to transmit audio description (from none to one device per screen); and (4) additional devices for audio description (ranging from 2 for Single Screens to 18 for Megaplexes).

* Because unit costs for captioning and audio description equipment have either remained steady or declined between 2010 and 2013, they are assumed to remain constant from 2013 (when last researched) to 2015, when the final rule is expected to be published.

Should the Department proceed under Option 1 and cover analog screens, per theater costs for analog theaters would be higher than those for digital theaters for each type/size.[42] The first year per-theater costs for analog single screen theaters, which are measured in year four, would total $8,172. The first year costs for digital single screen theaters, which are measured in year one, would average $3,198.

PER ANALOG THEATER INITIAL CAPITAL COSTS OF CAPTIONING AND AUDIO DESCRIPTION EQUIPMENT

[Hardware, software and devices, 2015 dollars *]

Analog theater type/size	Per theater initial capital costs (rear window technology for analog films)
Megaplex **	*NA*
Multiplex **	*NA*
Miniplex	$31,884
Single Screen	8,172

Note: These first year costs include (1) the costs to purchase and install: Captioning hardware and software (one per screen); (2) individual devices for captioning (ranging from 4 for Single Screens to 34 for Megaplexes); (3) additional hardware, if needed, to transmit audio description (from none to one device per screen); and (4) additional individual audio description listening devices (ranging from 2 for Single Screens to 18 for Megaplexes).

* Since unit costs for captioning and audio description equipment have either remained steady or declined between 2010 and 2013, they are assumed to remain constant from 2013 (when last researched) to 2015, when the final rule is expected to be published.

** Note that the Initial RA assumes that all Megaplexes and Multiplexes have transitioned to digital projection systems by the time this rule goes into effect.

In addition, the Initial RA uses a value equivalent to 3 percent of all the captioning and audio-descriptive equipment owned by the theater to capture any operations and maintenance costs including the incremental increase to staff time, the costs of adding information that captioning or audio description is available when preparing communications regarding movie offerings, and other potential increases in administrative costs. These costs are annual. This 3 percent is a factor commonly used in construction and equipment maintenance. *See* Regulatory Impact Analysis for the Final Revised Regulations Implementing Titles II and III of the ADA, app. 3.I (Sept. 15, 2010), available at *http://www.ada.gov/regs2010/RIA_2010regs/ria_appendix03.htm#ai* (last visited July 14, 2014).

In dollar terms, operations, maintenance, and training costs for analog theaters are estimated on an annual basis to average from a low of $245 for Single Screens to a high of $957 for Miniplexes; for digital theaters' operations, maintenance and training costs are estimated to average from a low of $96 for Single Screens to a high of $1,156 for Megaplexes.

Question 16: The Department invites comment on the Initial RA's methodology, cost assumptions, and cost estimates, including the specific costs of purchasing, installing and replacing captioning and audio description equipment, and the costs of complying with the training and notice requirements of the rule. The Department is particularly interested in receiving comments about the frequency with which captioning and audio description devices need to be replaced. The Department is also interested in estimates of how much time it would take for theaters to acquire the equipment needed to comply with this rule.

3. Benefits—Qualitative Discussion of Benefits

The benefits of this rule are difficult to quantify for multiple reasons. The Department has not been able to locate robust data on the rate at which persons with disabilities currently go to movies shown in movie theaters. In addition, as a result of this rule, the following number of persons will change by an unknown amount: (1) The number of persons with disabilities who will newly go to movies, (2) the number of persons with disabilities who will go to movies more often, (3) the number of persons who will go to the movies as part of a larger group that includes a

[42] The Department's analysis assumes that at the time this rule takes effect, theaters will either be exclusively digital or exclusively analog (that is, all of the screens in a theater will be either digital or analog).

person with a disability, and (4) the number of persons with disabilities who would have gone to the movies anyway but under the rule will have a fuller and more pleasant experience. In addition, the Department does not know precisely how many movie theaters currently screen movies with closed captioning and audio description, or how many people with hearing or vision disabilities currently have consistent access to movie theaters that provide closed captioning and audio description. Finally, the Department is not aware of any peer reviewed academic or professional studies that monetize or quantify the societal benefit of providing closed captioning and audio description at movie theaters.

The individuals who will directly benefit from this rule are those persons with hearing or vision disabilities who, as a result of this rule, would be able for the first time to attend movies with closed captioning or audio description in theaters across the country on a consistent basis. Individuals who will indirectly benefit from this rule are the family and friends of persons with hearing and vision disabilities who would be able to share the movie-going experience more fully with their friends or loved ones with hearing and vision disabilities.

Data on movie-going patterns of persons who are deaf or hard of hearing or are blind or have low vision is very limited, making estimations of demand very difficult. However, numerous public comments suggest that many persons who are deaf or hard of hearing or are blind or have low vision do not go to the movies at all, or attend movies well below the national average of 4.1 annual admissions per person, because of the lack of auxiliary aids and services that would allow them to understand and enjoy the movie.

Though we cannot confidently estimate the likely number of people who would directly benefit from this proposed rule, we have reviewed data on the number of people in the United States with hearing and vision disabilities. The Census Bureau estimates that 3.3 percent of the U.S. population has difficulty seeing, which translates into a little more than eight million individuals in 2010, and a little more than two million of those had ''severe'' difficulty seeing.[43] At the same time, the Census Bureau estimates that 3.1 percent of people had difficulty hearing, which was a little more than 7.5 million individuals in 2010, and approximately one million of them had ''severe'' difficulty hearing. Not all of these people would benefit from this proposed rule. For example, some people's hearing or vision disability may not be such that they would need closed captioning or audio description. Some people with hearing or vision disabilities may not use the equipment for a variety of reasons, including finding the equipment uncomfortable to use. Some people with hearing or vision disabilities may already have consistent access to theaters that screen all their movies with closed captioning and audio description. And some theaters may not provide closed captioning and audio description for all their movies because it would be an undue burden under the ADA to do so. Meanwhile, some people with hearing or vision disabilities would not attend public screenings of movies even if theaters provided closed captioning and audio description simple because they do not enjoy going out to the movies—just as is the case among persons without disabilities.[44]

In recent years, a large number of movie theaters have already invested in equipment to provide closed captioning and audio description. As noted earlier in this NPRM, NATO estimates that 53 percent of digital screens are already captioning and audio description enabled. However, this does not translate into an estimate that about half (or 53 percent) of persons who are deaf or hard of hearing or are blind or have low vision are now benefiting from captioning or audio description. There are multiple reasons why, even if we accept this estimate of the current availability of captioning and audio description, that it does not translate into direct benefits for all those who could benefit. Such reasons include the following: (1) Only some screens at some theaters may have closed captioning and audio description capabilities and those may not be showing the movie the person wants to see, (2) the theater may not be showing the desired movie with closed captions and audio description on a convenient day or at a convenient time, (3) the theater may be located much farther away from where the person with a disability resides than other, less accessible theaters, which may result in a decision not to go to a movie theater at all, or (4) a person may live in a community that has theaters with closed captioning and audio description capability but may travel (for vacation, to visit relatives, for work, or other reasons) to a community that does not have theaters that are captioning and audio description enabled.

Not only is the estimate of the number of who might directly benefit from the proposed rule uncertain, but the individual benefits are not uniform because persons who are deaf or hard of hearing or are blind or have low vision are likely to benefit from this proposed rule in different ways and realize benefits in different amounts. The type and amount of benefits can depend on personal circumstances and preferences, as well as proximity to movie theaters that otherwise would not offer captioning or audio description but for this proposed rule. Some persons with vision and hearing disabilities have effectively been precluded from going to movies at theaters because the only theaters available to them did not offer closed captioning or audio description, offered open captioning but only at inconvenient times (such as the middle of the day during the week), or offered captioning or audio description for only a few films and not for every screening of those films. For these persons, the primary benefit will be the ability to see movies when released in movie theaters along with other movie patrons that they otherwise would not have had the opportunity to do. They will have the value of that movie-going experience, as well as the opportunity to discuss the film socially at the same time as the rest of the movie-viewing public. The amount of benefit experienced by a person with a vision or hearing disability who previously had no access to a theater that provided closed captioning or audio description at all its screenings will be different than the amount experienced by a person with a hearing or vision disability who previously had access to a theater that did consistently provide closed captioning and audio description at its screenings. In addition, the amount of benefit from this rule experienced by a person who cannot follow a movie at all without the assistance of closed captioning is likely to be greater than the amount of benefit experienced by a person who can follow parts of a movie

[43] The Census defines ''[d]ifficulty seeing'' as ''experiencing blindness or having difficulty seeing words and letters in ordinary newsprint, even when wearing glasses or contact lenses (if normally worn).'' U.S. Census Bureau, U.S. Department of Commerce, P70-131, *Americans with Disabilities: 2010 Household Economic Studies* at 8 (2012), available at *http://www.census.gov/prod/2012pubs/p70-131.pdf* (last visited July 14, 2014). It defines ''[d]ifficulty hearing'' as ''experiencing deafness or having difficulty hearing a normal conversation, even when wearing a hearing aid.'' *Id.*

[44] In 2012, a little more than two thirds (68 percent) of the U.S. and Canadian population over two years old went to a movie at a movie theater at least once that year. *See* Motion Picture Association of America, *Theatrical Market Statistics* at 11 (2012), available at *http://www.mpaa.org/wp-content/uploads/2014/03/2012-Theatrical-Market-Statistics-Report.pdf* (last visited July 14, 2014).

without the assistance of closed captioning.

In addition to the direct beneficiaries of the proposed rule discussed above, others may be indirect beneficiaries of this rule. Family and friends of persons with these disabilities who wish to go to the movies all together as a shared social experience will now have greater opportunities to do so. More adults who visit elderly parents with hearing or sight limitations would presumably be able to take their parents on outings and enjoy a movie at a theater together, sharing the experience as they may have in the past.

The Department received numerous comments from individuals who are deaf or hard of hearing or blind or have low vision in response to its 2010 Advance Notice of Proposed Rulemaking on Movie Captioning and Video Description in Movie Theaters describing how they were unable to take part in the movie-going experience with their friends and family because of the unavailability of captioning or audio description. Many individuals felt that this not only affected their ability to socialize and fully take part in family outings, but also deprived them of the opportunity to meaningfully engage in the discourse that often surrounds movie attendance. Parents with disabilities also complained that they could not answer their children's questions about a movie they saw together because the parents did not understand what had happened in the movie.

Of perhaps greater significance to the discussion of the benefits of this rule, however, are issues relating to fairness, equity, and equal access, all of which are extremely difficult to monetize, and the Department has not been able to robustly quantify and place a dollar value on those benefits. Regardless, the Department believes the non-quantifiable benefits justify the costs of requiring captioning and audio description at movie theaters nationwide.

ANNUALIZED COSTS AND BENEFITS OF PROPOSED RULE

[2015 Dollars, 15-year time horizon]

7% Discount Rate			3% Discount Rate		
Baseline 1 assumptions (one screen per-theater)	Baseline 2 assumptions (litigation-based)	Baseline 3 assumptions (NATO survey based)	Baseline 1 assumptions (one screen per-theater)	Baseline 2 assumptions (litigation-based)	Baseline 3 assumptions (NATO survey based)
Costs (million $)					
Option 1—Four Year Compliance for Analog Screens					
$24.8	$21.1	$19.5	$23.1	$19.7	$18.3
Option 2—Deferred Rulemaking for Analog Screens					
$20.4	$16.7	$15.2	$18.9	$15.6	$14.2
Benefits					
	The proposed rule would address the discriminatory effects of communication barriers at movie theaters encountered by individuals who are deaf or hard of hearing or are blind or have low vision. By ensuring that movie theaters screen those movies that are produced and distributed with the necessary auxiliary aids and services—captioning and audio description—and that theaters provide the individual devices needed to deliver these services to patrons with these particular disabilities, this rule would afford such individuals an equal opportunity to attend movies and follow both the audio and visual aspects of movies exhibited at movie theaters. Although the Department is unable to monetize or quantify the benefits of this proposed rule, it would have important benefits. For example, it would provide people with hearing and vision disabilities better access to the movie viewing experience enjoyed by others; it would allow such persons to attend and enjoy movies with their family members and acquaintances; it would allow people with hearing or vision disabilities to participate in conversations about movies with family members and acquaintances; and it would promote other hard-to-quantify benefits recognized in Executive Order 13563 such as equity, human dignity, and fairness.				

Question 17: The Department invites comment on methods and data for monetizing or quantifying the societal benefits of the proposed regulation, including benefits to persons who are deaf or hard of hearing or blind or have low vision, as well as to other members of the movie-going public or other entities. For example, the Department invites comments on methods and data for estimating the number of people with vision or hearing disabilities who would benefit from this rule, and addressing the challenges noted above in developing such an estimate, as well as comments on methods and data that could be used to estimate the value of the different types of benefits noted above. The Department also invites comments on its qualitative discussion of the benefits of this rule, which include equity, human dignity, and fairness.

B. Regulatory Flexibility Act—Impact on Small Businesses

1. Small Business Threshold Assessment—Methodology and Summary of Results

Consistent with the provisions of the Regulatory Flexibility Act, the Department has also carefully considered the likely impact of the proposed regulation on small businesses in the movie exhibition industry. *See* 5 U.S.C. 605(b); Memorandum for the Heads of Executive Departments and Agencies, Regulatory Flexibility, Small Business, and Job Creation, 76 FR 3827 (Jan. 18, 2011). The Department has determined that this proposed rule will have a significant economic impact on a substantial number of small businesses.

For motion picture theaters, small businesses constitute the vast majority of firms in the industry. The current size standard for a small movie theater business is $35.5 million dollars in annual revenue. In 2007, the latest year

for which detailed breakouts by industry and annual revenue are available, approximately 98 percent of movie theater firms met the standard for small business, and these firms managed approximately 53 percent of movie theater establishments.[45] As noted earlier, the Department is considering two options for analog screens. Option 1 would delay the compliance date for analog screens for four years after publication of the final rule. Option 2 would defer rulemaking altogether for analog screens until a later date. The IRFA estimates for Option 1 the average initial capital costs per firm for firms that display digital or analog movies. The average costs for small firms are estimated to be between 0.7 percent to 2.1 percent of their average annual receipts for firms with digital theaters, and between 2.0 percent to 5.7 percent of average annual receipts for firms with analog theaters. The Department has used the IRFA to examine other ways, if possible, to accomplish the Department's goals with fewer burdens on small businesses. The vast majority of theaters with analog screens are small businesses and the Department believes that both of the options for analog screens under consideration in the proposed rule will result in fewer burdens on small movie theater businesses with analog screens.

2. Initial Regulatory Flexibility Analysis

a. Summary of Reasons for Proposed Regulation

Because the Department's rationale for proposing these requirements for movie captioning and audio description have already been discussed in full throughout this preamble (*see, e.g.,* section II.C, *supra*), such reasoning is merely summarized here. There are, in sum, four primary reasons why the Department is proposing regulatory action at this time. First, for persons who are deaf or hard of hearing or blind or have low vision, the unavailability of captioned or audio-described movies inhibits their ability to socialize and fully take part in social and family outings and deprives them of the opportunity to meaningfully participate in an important aspect of American culture. Second, a significant—and increasing—proportion of Americans have hearing or vision limitations that prevent them from fully and effectively understanding movies without auxiliary aids such as captioning and audio description. Third, technological advancements mean not only that an ever-increasing number of movie theaters have been converted to digital cinema systems, but also that such theaters can exhibit movies with closed captions using commercially-available equipment at relatively low cost. And, lastly, despite the availability of these auxiliary aids and the general ADA obligation to provide effective communication to patrons with disabilities, individuals with disabilities in many parts of the United States continue to lack access to movies with captioning and audio description. Movie theaters' collective compliance efforts to date simply have not resulted in equal access to movies exhibited at theaters nationwide for individuals who are deaf or hard of hearing or blind or have low vision. The Department is thus convinced that regulation is warranted at this time to explicitly require movie theaters to exhibit movies with closed captioning and audio description at all times and for all showings whenever movies are produced, distributed, or otherwise made available with captioning and audio description, unless to do so would result in an undue burden or fundamental alteration. This proposed regulation is necessary in order to achieve the goals and promise of the ADA.

b. Summary of Objectives of, and Legal Basis for, the Proposed Regulation

The proposed rule for captioning and audio description rests on the existing obligation of title III-covered facilities—such as movie theaters—to ensure that persons with disabilities receive ''full and equal enjoyment'' of their respective goods and services, including, as needed, the provision of auxiliary aids and services for persons who are deaf or hard of hearing or blind or have low vision. The proposed rule states that a movie theater owner or operator is required to exhibit movies with closed captioning and audio description for all screenings so long as the movie has been produced by the movie studio or distributor with captioning or audio description (unless doing so would result in an undue burden or fundamental alteration). The proposed rule imposes no independent obligation on movie theaters to provide captions and audio description if the movie is not available with these features.

The Department expects that implementation of the proposed rule will lead to consistent levels of accessibility in movie theaters across the country, and that patrons who are deaf or hard of hearing or blind or have low vision will be able to use captioning or audio description equipment to better understand movies being exhibited in movies theaters.

The legal basis for the Department's proposed regulation—discussed at length in other parts of this preamble (*see* section II.B, *supra*)—rests on both title III of the ADA and its existing implementing regulation. Title III prohibits public accommodations, which, by statutory definition, include movie theaters, from discriminating against any individual on the basis of disability in the full and equal enjoyment of their goods and services. 42 U.S.C. 12182(a). Further, of particular import to the proposed regulation, title III also requires public accommodations to take whatever affirmative steps may be necessary ''to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently * * * because of the absence of auxiliary aids and services'' absent a showing of fundamental alteration or undue burden by such public accommodation. 42 U.S.C. 12182(b)(2)(A)(iii).

The Department's recently-revised title III regulation reiterates these statutory requirements—which were first incorporated into the implementing regulation in 1991—and emphasizes that the overarching obligation of a public accommodation is to ensure effective communication with individuals with disabilities through the provision of necessary auxiliary aids and services. 28 CFR 36.303(c). While the type of auxiliary aid or service necessary to ensure effective communication depends on several factors, including the method of communication used by the individual and the communication involved, closed captioning and audio recordings are specifically referenced as aids or services contemplated by the rule. 28 CFR 36.303(b)(1), (2). Here, in the context of movie screenings at movie theaters, captioning is the only auxiliary aid presently available that effectively communicates the dialogue and sounds in a movie to individuals who are deaf or whose hearing impairments otherwise preclude effective use of assistive listening systems.[46] Likewise,

[45] The size standard of $35.5 million can be found in U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* at 28, available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf* (last visited July 14, 2014).

[46] Proposed § 36.303(g)(2)(ii) states that ''[m]ovie theaters may meet their obligation to provide captions to persons with disabilities through use of a different technology, such as open movie captioning, so long as the communication provided is as effective as that provided to movie patrons without disabilities.'' This provision will allow theaters the option to choose newer and more cost effective technologies to provide effective

for individuals who are blind or who have low vision, the only auxiliary aid presently available that effectively communicates the visual components of a movie is audio description.

c. Estimated Number and Type of Small Entities in the Movie Exhibition Industry

The Regulatory Flexibility Act defines a ''small entity'' as a small business (as defined by the Small Business Administration Size Standards) or a small organization such as a nonprofit that is ''independently owned and operated'' and is ''not dominant in its field.'' 5 U.S.C. 601(6); *see id.* 601(3) and (4); 15 U.S.C. 632. For motion picture theaters (North American Industry Classification System Code 512131), small businesses constitute the vast majority of firms in the industry. The current size standard for a small movie theater business is $35.5 million dollars in annual revenue.[47] In 2007, the latest year for which detailed breakouts by industry and annual revenue are available, approximately 98 percent of movie theater firms met the standard for small business, and these firms managed approximately 53 percent of movie theater establishments. Data from the 2007 Economic Census, prepared for the Small Business Administration (SBA) and downloaded from its Web site, report that 2,004 movie theater firms operated 4,801 establishments that year; of those 2,004 movie theater firms, approximately 1,965 would meet the current SBA standard for a small business.[48] These 1,965 firms operated 2,566 establishments.

DISTRIBUTION OF MOVIE THEATER FIRMS, BY REVENUE, 2007

	Number of firms	Number of establishments	Firms as % of total	Cumulative total (%)	Establishments % of total	Cumulative total (%)
Total Firms	2,004	4,801	100		100	
Firms with sales/receipts/ revenue less than $100,000	333	333	16.6	16.6	6.9	6.9
Firms with sales/receipts/ revenue of $100,000 to $499,999	703	712	35.1	51.7	14.8	21.8
Firms with sales/receipts/ revenue of $500,000 to $999,999	318	339	15.9	67.6	7.1	28.8
Firms with sales/receipts/ revenue of $1,000,000 to $2,499,999	386	472	19.3	86.8	9.8	38.7
Firms with sales/receipts/ revenue of $2,500,000 to $4,999,999	109	197	5.4	92.3	4.1	42.8
Firms with sales/receipts/ revenue of $5,000,000 to $7,499,999	40	99	2.0	94.3	2.1	44.8
Firms with sales/receipts/ revenue of $7,500,000 to $9,999,999	24	60	1.2	95.5	1.2	46.1
Firms with sales/receipts/ revenue of $10,000,000 to $14,999,999	23	106	1.1	96.6	2.2	48.3
Firms with sales/receipts/ revenue of $15,000,000 to $19,999,999	13	105	0.6	97.3	2.2	50.5
Firms with sales/receipts/ revenue of $20,000,000 to $24,999,999	6	50	0.3	97.6	1.0	51.5
Firms with sales/receipts/ revenue of $25,000,000 to $29,999,999	8	79	0.4	98.0	1.6	53.2
Firms with sales/receipts/ revenue of $30,000,000 to $34,999,999	2	14	0.1	98.1	0.3	53.4
Firms with sales/receipts/ revenue of $35,000,000+*	39	2,235	1.9	100.0	46.6	100.0

* Firms with sale/receipts/revenue of higher than $35,500,000 are not considered small businesses under SBA size standards. The SBA database presents data for these firms in six categories, which have been consolidated into one for this table.

Source: Number of firms and number of establishments from Small Business Administration, Statistics of U.S. Businesses, Business Dynamics Statistics, Business Employment Dynamics, and Nonemployer Statistics. *http://www.sba.gov/advocacy/849/12162* (last visited July 14, 2014). Downloaded from SBA Web site December 2013.

communication to movie patrons, if such technologies are developed in the future.

[47] The size standard of $35.5 million can be found in U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* at 28, available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf* (last visited July 14, 2014).

[48] Data taken from Excel file ''static_us'' downloaded from SBA Web site for ''Firm Size Data,'' available at *http://www.sba.gov/advocacy/849/12162* (last visited July 14, 2014). Calculations were also performed using a dataset from the Census Bureau's American FactFinder. *See http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml* (last visited July 14, 2014). Both datasets are derived from the 2007 Economic Census, but differ slightly.

As part of a larger movement within the film producing industry, nearly all (if not all) film production is moving to digital, and the vast majority of, if not nearly all, movie theaters likely will convert to the digital format. Because of the cost of transitioning to digital, large firms are more likely to have already converted to digital, or plan to do so soon. For these same reasons, analog theaters are more likely to be small businesses. At the same time, per screen costs of captioning equipment are significantly higher for analog theaters than for digital theaters.

While the first movie theaters were facilities with a single screen and auditorium, in recent years larger facilities are being built, some with a dozen or more auditoriums and screens each capable of showing movies at the same time. Yet, at this time, many single screen theaters remain open. The Initial RA prepared detailed costs estimates, over time, using four theater size categories based on data presented by the MPAA. To estimate the costs to small businesses, this IRFA examined the percentages of small businesses and the distribution of theaters and screens by theater size type, and made estimations regarding the likely prevalence of small businesses among each size type (see the table below). No Megaplexes are expected to be small businesses.

THEATERS BY TYPE AND ESTIMATED PREVALENCE OF SMALL BUSINESSES

Theater type	Projected number of theaters in 2015	Annual growth rate (percent)	Likelihood of small businesses
Megaplex—16+ screens	718	2.0	*No small businesses.*
Multiplex—8–15 screens	1,893	2.0	Some small businesses.
Miniplex—2–7 screens	1,500	−4.2	Many small businesses.
Single Screen—1 screen	996	−4.2	Nearly all small businesses.
Total	5,107		

Source: Estimated using data for 2008–2012 as in MPAA, *Theatrical Market Statistics* (2012), available at *http://www.mpaa.org/wp-content/uploads/2014/03/2012-Theatrical-Market-Statistics-Report.pdf* (last visited July 14, 2014).

ESTIMATES OF DIGITAL AND ANALOG THEATERS AND SCREENS IN 2015

	Number of digital theaters	Number of digital screens	Number of analog theaters	Number of analog screens
Megaplex—16+ screens	718	12,924	0	0
Multiplex—8–15 screens	1,893	20,823	0	0
Miniplex—2–7 screens	452	1,807	1,048	4,192
Single Screen—1 screen	300	300	696	696
Total	*3,363*	*35,854*	*1,744*	*4,888*

The proposed rule does not apply different requirements to firms by size. It does, however, seek public comment on two options for theaters with analog screens. Option 1 would delay the compliance date for analog screens for four years after publication of the final rule. Option 2 would defer rulemaking altogether for analog screens until a later date. As stated previously, the vast majority of theaters with analog screens are small businesses, and the Department believes that both of the options for analog screens under consideration in the proposed rule will result in fewer burdens on small movie theater businesses with analog screens. While this small business assessment necessarily draws on the Initial RA's ''main'' cost model, it also incorporates data specific to small businesses. As required by the Regulatory Flexibility Act,[49] the cost model underlying the Initial RA's small business assessment uses SBA-defined small business size standards.[50] A dataset downloaded from SBA's Web site presents data for 18 different revenue size categories (12 of those categories for firms with estimated annual receipts of less than the $35.5 million size standard for a small firm in this industry). These 18 revenue size categories were consolidated into four categories, with the following three meeting the SBA size standard for a small business: Firms with sales/receipts/revenue of (a) $499,999 and under; (b) $500,000–$4,999,999; and (c) $5,000,000–$35,500,000. One of the 18 revenue categories in the SBA dataset (firms with sales/receipts/revenue of $30,000,000–$34,999,999) had only two firms included. To prevent the release of proprietary financial information, the SBA dataset only includes the number of firms and their establishments in this category; it does not include any information on sales, receipts or revenues. Therefore, while the estimate of the total number of small businesses that could be impacted by the proposed rule includes these two firms, the calculations for costs of compliance by revenue category do not.

Question 18a: Numbers of Small Businesses

The Department is interested in receiving comments and data on all of the assumptions regarding the numbers of small entities impacted by this regulation, particularly on the numbers of small entities that have digital or analog screens (or both), the number of screens in each theater, the type of movies shown at these theatres (first-run commercial films, independent films, etc.), and the type of captioning equipment and devices these theatres already have. The Department is particularly interested in data regarding small analog theatres, such as the availability of analog film prints, the availability of movies with captions and audio description (in both analog and digital formats), the rate at which small theatres are converting to digital cinema, and the economic viability of

[49] *See* 5 U.S.C. 601 *et seq.*

[50] The Small Business Size Regulations can be found at 13 CFR part 121.

both small analog and small digital theatres. The Department would also be interested in data on the number of analog and digital theaters by theater type and annual receipts. Finally, the Department is interested in whether and to what extent small analog and small digital theaters are participating in certain cost-sharing programs to help convert theaters to digital technology, such as a virtual print fee (VPF) program. If they are not participating in such cost-sharing programs, why not? (See Question 1 for additional questions about analog theatres).

Question 18b: Numbers of Small Nonprofit Entities

The Department seeks comment and data on small nonprofits that operate theatres that would be covered by this proposed rule, particularly on the number of small entities in this category, and the potential costs and economic impacts of the proposed rule. Should the Department adopt a different compliance schedule for these theaters?

d. Estimated Cost of Compliance for Small Entities [51]

The SBA/U.S. Economic Census data was incorporated into the Initial RA's estimation for impacts on small businesses. First, receipt data was used to develop assumptions regarding the distribution of ''small businesses'' among the four theater size types. The assignment of theater size type is critical to the estimation because it determines the number of screens and, therefore, total costs per establishment.

Using the Initial RA cost model estimation of the number of theaters by size type in 2015, the IRFA distributed the number of establishments of small business movie theater firms beginning with all Single Screen establishments and then applied the remaining portion to Miniplex and Multiplex establishments.

2015 DISTRIBUTION OF THEATERS

[Model projection]

Theater size type	Number of theaters	Percentage
Megaplex	718	14.1
Multiplex	1,893	37.1
Miniplex	1,500	29.4
Single Screen	996	19.5
Total	5,107	100

For this distribution, Single Screen theaters made up 89.6 percent of establishments in the smallest revenue category. The remaining establishments in this category were assumed to be Miniplexes. All of the establishments with receipts between $500,000 and $4,999,999 were assumed to be Miniplex theaters. After allocating those theaters, the remaining Miniplex theaters estimated for 2015 were distributed to the largest revenue category. Because there were more theaters in the largest revenue category than the remaining estimated Miniplex theaters, the other theaters in this revenue category were assumed to be all Multiplexes (approximately 41 percent). These distributions are summarized below. These distributions were then used to estimate the average cost per firm in each of the three consolidated small business revenue categories.

DISTRIBUTION OF THEATER SIZE TYPE FOR CONSOLIDATED REVENUE GROUPS

Consolidated revenue group [52]	Theater size type
$499,999 and under ..	89.6% Single Screen, 10.4% Miniplexes.
$500,000–$4,999,999	100% Miniplexes.
$5,000,000 to $35,500,000.	58.8% Miniplexes; 41.2% Multiplexes.

THEATER EQUIPMENT REQUIREMENTS BASED ON SCOPING AND THEATER SIZE

Equipment	Megaplex Avg: 18 screens	Multiplex Avg: 11 screens	Miniplex Avg: 4 screens	Single screen
Captioning Hardware and Devices:				
Captioning Hardware Needed	18	11	4	1
Captioning Devices Needed	34	28	12	4
Descriptive Listening Hardware and Devices:				
Audio Hardware Needed	18	11	4	1
Audio Devices Needed	18	11	4	2

Using the average costs per theater developed in the Initial RA, we were able to calculate the average costs per theater and per firm for the three consolidated revenue groups ($499,999 and under; $500,000–$4,999,999; and $5,000,000–$35,500,000). Costs were first calculated on a per-establishment basis, and then using the average number of establishments per firm for each of the three consolidated revenue groups, translated into an average per

[51] This estimate of costs for small businesses assumes that the Department would proceed under Option 1 (four-year compliance date for analog screens). If the Department decides to adopt Option 2 for the final rule and defer application of the requirements of the rule for analog screens, the costs for small businesses will be significantly less because the rule will only apply to small business digital theaters.

[52] The distribution is slightly different using the dataset from American FactFinder: For firms with revenue $499,999 and under, 100 percent were assumed to be Single Screen; for those with revenue $500,000-$4,999,999, 7 percent were Single Screens and 93 percent Miniplexes; for those with revenue $25,000,000 to $35,500,000, 79 percent were Miniplexes and 21 percent Multiplexes.

firm cost. This cost was then compared to the average receipts per firm for that consolidated revenue group.

The resulting ratio of average costs to average receipts ranges from a low of 0.7 percent (for digital firms with revenues of $5,000,000 to $35,500,000) to a high of 5.7 percent (for analog firms with revenues of $499,999 or less). The impact on firms with digital projection is comparatively smaller than the impact on firms maintaining analog projection. The ratio of average costs/receipts is estimated to range from 0.7 percent to 2.1 percent for all movie theater companies using digital systems. In contrast, the same ratio ranges from 2.0 percent to 5.7 percent for all firms using analog projection.

ESTIMATION OF COSTS FOR SMALL MOVIE THEATERS, BY FIRM SIZE, BASED ON 2015 SIZE/REVENUE DISTRIBUTION

Cost	Firms $499,999 and under	Firms $500,000 to $4,999,999	Firms $5,000,000 to $35,500,000 **
Digital			
Average receipts per firm *	$188,384 to $201,973	$1,471,549 to $1,484,995	$9,705,377 to $12,437,259
Average cost per theater *	$3,198 to $3,966	$10,063 to $10,586	$13,984 to $17,281
Average cost per firm *	$3,233 to $3,992	$12, 539 to $14,454	$81,176 to $103,309
Ratio of average cost/receipts *	1.6% to 2.1%	0.8% to 1.0%	0.7% to 1.1%
Analog			
Average receipts per firm *	$188,384 to $201,973	$1,471,549 to $1,484,995	$9,705,377 to $12,437,259
Average cost per theater *	$8,172 to $10,638	$30,204 to $31,884	$43,449 to $54,673
Average cost per firm *	$8,263 to $10,706	$37,638 to $43,534	$252,224 to $326,844
Ratio of average cost/receipts *	4.1% to 5.7%	2.5% to 3.0%	2.0% to 3.4%

* The ranges represent the figures calculated using the two datasets created from data from the 2007 Economic Census, which breaks out data by revenue category (downloaded from SBA's Web site (*http://www.sba.gov*) and the Census Bureau's American FactFinder Web site (*http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml*), respectively), but which differ slightly. Note that the composition of theater size types also varies per revenue group depending on the dataset used, and therefore the average cost per theater varies as well.

** Note that the calculations for this category using the dataset downloaded from the SBA Web site do not include any data for the two firms in the revenue category for firms with sales/receipts/revenue of $30,000,000–$34,999,999 because no data on annual receipts for those two firms was included. The dataset downloaded from American FactFinder had different revenue categories from those downloaded from SBA's Web site. To estimate those firms meeting the SBA size standards using the dataset downloaded from the American FactFinder Web site, all the firms with revenues less than $25 million, and half of those with revenues from $25,000,000 to $49,999,999 were counted as a way of estimating the number of entities that fall under $35.5 million within that revenue category.

Average capital costs per theater type were estimated by multiplying the number of screens by the required analog or digital equipment and the scoped number of devices. These average costs are presented below.

ESTIMATED AVERAGE RECEIPTS AND COSTS PER FIRM, DIGITAL AND ANALOG

	Digital				Analog			
Size of firms ($)	Average receipts per firm	Average cost per theater	Average cost per firm	Ratio of average cost/receipts (percent)	Average receipts per firm	Average cost per theater	Average cost per firm	Ratio of average cost/receipts (percent)
Less than $100,000	$52,264	$3,198	$3,198	6.1	$52,264	$8,172	$8,172	15.6
$100,000–499,000	252,862	4,326	4,381	1.7	252,862	11,791	11,942	4.7
$500,000–999,000	711,456	10,586	11,285	1.6	711,456	31,884	33,990	4.8
$1,000,000–2,499,000	1,581,824	10,586	12,945	0.8	1,581,824	31,884	38,988	2.5
$2,500,000–4,999,000	3,298,550	10,586	19,132	0.6	3,298,550	31,884	57,625	1.7
$5,000,000–7,499,000	5,888,575	10,586	26,200	0.4	5,888,575	31,884	78,913	1.3
$7,500,000–9,999,000	7,954,042	10,586	26,465	0.3	7,954,042	31,884	79,710	1.0
$10,000,000–14,999,000	9,927,478	10,586	48,788	0.5	9,927,478	31,884	146,944	1.5
$15,000,000–19,999,000	14,045,000	22,436	181,213	1.3	14,045,000	72,219	583,306	4.2
$20,000,000–24,999,000	16,288,167	26,839	223,658	1.4	16,288,167	87,206	726,717	4.5
$25,000,000–29,999,000	21,415,875	26,839	265,035	1.2	21,415,875	87,206	861,159	4.0

Based on data from Small Business Administration, Statistics of U.S. Businesses, Business Dynamics Statistics, Business Employment Dynamics, and Non-employer Statistics, available at *http://www.sba.gov/advocacy/849/12162* (data downloaded Dec. 2013). *See* Table 38 in the Initial Regulatory Assessment and Initial Regulatory Flexibility Analysis (available at *http://www.ada.gov*) for more information on how the figures in this table were calculated.

DIGITAL CAPTIONING EQUIPMENT UNIT COSTS

Technology	Digital captioning hardware cost (one needed per screen)	Digital captioning individual device costs (multiple per screen/ theater may be needed)	Digital audio description hardware cost (one needed per screen)	Digital audio description individual device costs (multiple per screen/ theater may be needed)
Doremi's CaptiView	$690	$430	$625	$125
USL	1,057	479	0	69

ANALOG CAPTIONING EQUIPMENT UNIT COSTS

Technology	Analog captioning hardware cost (one per screen needed)	Analog captioning device costs (multiple per screen/ theater may be needed)	Analog audio description hardware cost (one per screen needed)	Analog audio description device costs (multiple per screen/ theater may be needed)
Rear Window [53]	$7,113	$95	$467	$106

AVERAGE PER ESTABLISHMENT COSTS OF PURCHASING DIGITAL CLOSED CAPTIONING AND AUDIO DESCRIPTION EQUIPMENT

Cost per digital theater	Doremi	USL	Average digital cost
Megaplex *	$40,540	$36,554	$38,547
Multiplex	27,880	25,798	26,839
Miniplex	10,920	10,252	10,586
Single Screen	3,285	3,111	3,198

* Note that the Initial RA assumes that no small business firm has Megaplexes; this data is presented for informational purposes only, to help illustrate the differences in average costs per digital theaters by type.

AVERAGE PER ESTABLISHMENT COSTS OF PURCHASING ANALOG CLOSED CAPTIONING AND AUDIO DESCRIPTION EQUIPMENT

Cost per analog theater [54]	Rear window
Megaplex	**
Multiplex	**
Miniplex	$31,884
Single Screen	$8,172

** Note that the Initial RA assumes that all Megaplexes and Multiplexes have transitioned to digital projection systems by the time this rule goes into effect.

Question 19: Small Business Compliance Costs

The Department seeks comment and data on the small business compliance cost estimates, including the costs associated with procuring and maintaining digital and analog equipment, the availability of this equipment, estimates of the average cost of this proposed rule by establishment and firm, and the ratio of average costs of this proposed rule to firm receipts. The Department is interested in comment on whether small theaters will incur higher prices in the purchase and installation of this equipment due to the lower volume needed. The Department also seeks public comment on its proposed scoping for individual captioning devices. Should the Department consider approaching scoping differently for small theatres? How so and why? (Please see Question 10 for additional questions about scoping for captioning devices). How many devices capable of transmitting audio description to individuals should each movie theater have on hand for use by patrons who are blind or have low vision? (Please see Question 12 for additional questions about scoping for audio description). Do small theaters face any additional costs not already included in these cost estimates? The Department seeks comment and data on what, if any, particular requirement of this rule would cause a small business to claim that it is an undue burden to comply with the requirements of this proposed rule.

e. Projected Reporting, Record-Keeping Requirements and Other Compliance Requirements of the Rule

As noted below in section VI.F, discussing the Paperwork Reduction Act, the proposed regulation imposes no reporting or record-keeping requirements on any movie theaters regardless of size. The Department acknowledges that there may be other compliance-related administrative costs incurred by all movie theaters—including small entities—as a result of the proposed regulation, including such tasks as having theater staff keep track of individual captioning devices or audio description headsets. However, such compliance costs are expected to be neither disproportionately borne by small entities nor significant. The proposed scoping requirements for individual captioning devices are directly proportional to total seat count or screen. The proposed scoping for individual audio-description devices is minimal and only applies to those theaters that do not currently have assistive listening receivers with at least two channels. Thus, smaller movie theaters (such as Miniplexes and Single Screen Theaters) necessarily would have relatively few pieces of required captioning and audio description equipment to inventory and maintain. Moreover, any costs related to such administrative tasks are expected to be minimal. The Department has also asked whether it should take a different approach to scoping for individual captioning devices for small theaters.

The rule will require that at least one person at the theater be able to provide

[53] The hardware required for Rear Window technology includes a LED display necessary to show captions in each analog projection auditorium, a Datasat/DTS XD20 interface, and individual Reflectors that are used by patrons. The cost for the LED display ranges from $2,850 to $3,975, depending on whether it is a 2- or 3-line display (a 2-line display is recommended); the LED display cost used in Regulatory Analysis is an average of the cost of the two sizes of display. The Datasat/DTS XD20 interface, which is an interface connecting the Rear Window LED display to the theater system, costs about $4,200 per auditorium. The only device for individual use is the Rear Window Reflector, which fits into cup holders and costs $95 each. (Note: all these prices are taken from the ''Rear Window® Captioning (RWC) Components Cost Overview'' released by Median Access Group at WGBH August 2010, and adjusted for the fact that licensing fees are no longer required.) For audio description, the Williams Sound Audio System is compatible with analog captioning systems and was used to estimate video description equipment costs for analog systems. The Williams Sound Audio System requires an audio transmitter for each auditorium, which costs $467. Patrons may use a receiver and a headset, which cost $88 and $18, respectively.

[54] Note that in the main Initial RA, all of the Megaplexes and Multiplexes are assumed to have converted to digital projection. This assumption was made because NATO had estimated at a Congressional hearing in May 2013 that 88 percent of screens in the nation now have digital projection, making it very unlikely that any large theater complex remains analog. If any Megaplexes and/or Multiplexes stayed with analog projection, their average costs for purchasing analog closed captioning and audio description equipment would be $141,578 and $87,206, respectively.

patrons with captioning and audio description and direct patrons on the equipment's use. This requirement can most easily be met by expanding the training for those persons who will already be required to be on-site to manage or oversee overall operations and the start of the exhibition of the movies. In addition, theaters already provide staff to distribute assistive listening devices when requested by patrons and to direct patrons on how to use those devices. It is reasonable to assume that the same staff member would provide assistance with captioning and audio description devices as well. A separate staff with ADA expertise is not required. The costs of this part of the rule will include any additional training time and any time spent providing and collecting devices and demonstrating their use, if needed.

The Initial RA uses a value equivalent to 3 percent of all the captioning and audio description equipment owned by the theater to capture the afore-discussed minimal operations and maintenance cost and incremental increase to staff time; costs of adding information that captioning or audio description is available when preparing communications regarding movie offerings, and other potential increases in administrative costs. This 3 percent is a factor commonly used in construction and equipment maintenance. *See, e.g.,* Final Regulatory Impact Analysis of the Proposed Revised Regulations Implementing Titles II and III of the ADA, Including Revised ADA Standards for Accessible Design: Supplemental Results (Sept. 15, 2010), available at *http://www.ada.gov/regs2010/RIA_2010regs/ria_supp.htm* (last visited July 14, 2014).[55] The Department expects that annual operations, maintenance, and training costs for analog theaters are estimated to average from a low of $245 for Single Screens to a high of $957 for Miniplexes; for digital theaters' operations, maintenance and training costs are estimated to average from a low of $96 for Single Screens to a high of $1,156 for Megaplexes.[56]

Question 20: Other Costs for Small Businesses

The Department invites comment on the estimation of operation and maintenance costs for this proposed rule, which include administrative costs to keep track of equipment, staff training and availability (see Question 15 for additional questions related to staff training), maintenance and replacement of captioning and audio description hardware and individual devices, and the notice requirement (see Questions 14 and 16 for additional questions about the notice requirement). The Department is particularly interested in receiving comments about the costs and frequency of replacing captioning and audio description equipment. Are there other compliance costs, such as regulatory familiarization, that should be included in this small business analysis?

f. Duplicative or Overlapping Federal Rules

The Department is not aware of any existing federal regulations that impose duplicative, overlapping, or conflicting requirements relative to the requirements in the proposed movie captioning and audio description regulation.

g. Discussion of Significant Regulatory Alternatives That Minimize Impact on Small Entities

In crafting this proposed regulation for movie captioning and audio description, the Department has taken care to propose requirements that temper effectiveness with cost considerations. That is, while the Department believes this regulatory action is required to support and enforce the ADA's effective communication mandate, the proposed requirements also are intended to regulate in a manner that is cost-efficient, easily understood by the movie exhibition industry, and—to the greatest extent possible—minimizes the economic impact on small entities.

As detailed earlier in this preamble (*see* section IV, Section-by-Section Analysis, ''Movie Captioning—Coverage, *supra*), the Department is proposing that all movie theaters covered by the rule, regardless of size, location, or type of movies exhibited, must exhibit captioned or audio-described movies (when available) for all screenings absent a showing of undue burden. Only such an across-the-board requirement fulfills the effective communication objective by permitting individuals who are deaf or hard of hearing or blind or have low vision disabilities to fully and equally participate in one of the most quintessential forms of American entertainment—going out to the movies—in the same manner as the rest of the movie going public.

Yet, while the proposed regulation imposes captioning and audio description requirements on all movie theaters irrespective of size, there are nonetheless several provisions that serve to ameliorate their relative economic impact on small entities. For example, the Department's regulatory proposal:

- Proposes two alternatives for theaters with analog screens: A four-year delayed compliance date (Option 1), or deferral of the requirements of this proposed rule for analog screens (Option 2);
- Establishes performance (rather than design) standards that enable small entities (as well as other movie theaters) to meet their captioning requirements in a flexible and cost-effective manner (§ 36.303(g)(2)(i));
- Specifies scoping requirements for individual captioning devices that are proportional to a theater's total seat count (*i.e.,* fewer seats means fewer devices are required), thereby ensuring that small theaters have reduced device costs (§ 36.303(g)(2)(iii)(A), (g)(3)(ii));
- Specifies a minimal number of individual audio-description listening devices that must be provided by a theater and permits ''overlap'' of scoping for audio-description listening devices and assistive listening headsets so long as such headsets are capable of receiving both types of audio signals (§ 36.303(g)(3)(ii)).

Moreover, while not expressly referenced in the text of proposed § 36.303(g), the Department has reiterated—at several points in this preamble—that those movie theaters that find that it is a significant difficulty or expense to comply with the requirements of this regulation will be able to assert the ''undue burden defense'' (*see* section II.B.2 *supra,* for an explanation of the factors that should be considered in asserting the defense). Throughout the last two decades, even without this regulation, movie theaters have been able to assert this defense when facing litigation alleging failure to provide effective communication to patrons with disabilities. Thus, while a large movie theater trade association suggested that many—if not most—small theaters would be forced out of business unless exempted entirely from any captioning requirements, the Department believes that such dire predictions are misplaced.[57] The

[55] *See id.* app. I: Operations and Maintenance, for more information on standard operations and maintenance costs, and the sources from which those were derived.

[56] See the Initial RA, Section 7 for the Sensitivity Analysis with two alternative rates—5 percent and 8 percent—for calculating operations and maintenance costs.

[57] While the number of public comments received in response to the 2010 ANPRM was extraordinary, there were relatively few comments that specifically addressed the impact of captioning requirements on small theaters. No comments were received from representatives of independent movie theaters or from individual small (indoor) movie theater

''undue burden'' defense serves as a limit should there be regulatory compliance costs that under particular circumstances would impose significant difficulty or expense. Where the costs of screening closed-captioned or audio-described movies in compliance with the proposed regulation are sufficiently burdensome as to place a small theater at financial risk, then such costs would—by definition—pose an ''undue burden.'' Such a movie theater would then be entitled to provide alternate compliance measures for auxiliary aids or services (if any) that were affordable in light of its particular circumstances.

Taken together, the foregoing considerations demonstrate the Department's sensitivity to the potential economic (cost) impact of the proposed regulation on small theaters (such as Miniplexes and Single Screen Theaters) and—to the extent consistent with the ADA—mitigate potential compliance costs.

In addition, the Department considered multiple alternatives for this rulemaking with a focus on choosing the alternative that best balances the requirements of the ADA with the potential costs to small business movie theaters. Among those alternatives weighed most heavily for the proposed rule are the two discussed below.

Requiring only 50 percent of screens to have closed captioning and audio description. The Department considered a proposal limiting the requirement for closed captioning and audio description to only 50 percent of movie screens. This alternative was discussed in the July 26, 2010, ANPRM. The ADA requires places of public accommodation ''to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.'' 42 U.S.C. 12182(b)(2)(A)(iii). After considering public comment and additional research, the Department has determined that it is not possible for movie theaters to meet their ADA obligation to provide equally effective communication to patrons with hearing and vision disabilities unless they have the capacity to show the movies that are available with captions and audio description at all showings when those same movies are available to patrons without disabilities; to only require access to 50 percent of movies being shown would be inappropriate. Unless a movie theater showed every movie on two screens in comparable auditoriums at all times—one screen showing the captioned and audio-described version and the other showing the same movie without captions and audio description—the Department is concerned that a 50 percent requirement would regularly lead to the circumstance where a movie theater would have a captioned or audio described movie, but would have no screen available on which to show it because all the appropriately equipped auditoriums were otherwise in use.

The Department considered whether it would be possible for movie theaters to meet their effective communication obligations by switching movies into auditoriums equipped to show movies with closed captions and audio description when a patron with a hearing or vision disability needed those accessibility features. But, the Department's research indicated that the business agreements regarding movie exhibitions limit this type of flexibility. Movie theaters regularly negotiate with film distributors regarding which auditoriums in a theater with more than one screen will show which films. Generally, if a film is expected to be very popular, it will open in the largest auditorium or in several auditoriums within the same complex. As the popularity decreases, the film will be moved from larger auditoriums to smaller auditoriums and from multiple auditoriums to a single auditorium. The timing of such moves will vary from theater to theater and from film to film.

Those theaters that do have the flexibility to switch auditoriums upon request to provide closed captioning or audio description would have other added costs associated with changing the auditoriums for showings. Costs could include the additional employee time and resources needed to physically switch the movie from one auditorium to another, as well as potential lost ticket sales if a more popular movie is displaced into a much smaller theater that sells out faster. Additionally, switching auditoriums to allow use of captioning or audio description equipment may result in auditorium changes for other patrons after they had purchased tickets and are possibly already seated. This would result in an inconvenience to many patrons, including the possibility that the switch would result in a different viewing experience than expected when purchasing a ticket due to differing auditorium sizes and comfort levels.

The Department also believes that this alternative would carry a much higher litigation risk. Patrons with disabilities would not have any way of assessing whether the failure to show a particular movie with closed captions and audio description was because the theater was failing to comply with its obligations under the regulation to provide these auxiliary aids and services or because that particular movie was not available with closed captions or audio description. Whether a theater had the capacity to move a film to accommodate a patron with a disability and should have done so upon request, or whether the theater did everything to meet its obligations under the regulation, would become murky and create confusion that could result in an increased risk of litigation.

Finally, this alternative favors larger movie theaters and disadvantages single screen theaters, which are more likely to be small businesses. Under a 50 percent requirement, at least one auditorium at every theater must have closed captioning and audio description capabilities. Thus, single screen theaters would see no reduction in costs under this alternative.

As such, the Department has rejected this alternative due to concerns that requiring only 50 percent of screens to have closed captioning and audio description capabilities would not comply with the ADA itself, that this approach would require substantial changes to the movie theater business model, that the initial perceptions that this approach would have substantially lower total costs are actually misleading, and that this approach would not address in any meaningful way the concerns for small business single screen theaters.

Compliance by analog theaters required in two years. The Department considered providing theaters with analog screens two years after the rule's publication date to become compliant, as opposed to the six-month compliance date provided for digital screens. This delay was considered for analog movie screens because such a large number of theaters are in the midst of transitioning to digital cinema, that additional time might be necessary. In addition, the delayed compliance date would have allowed small theaters that remain analog more time to obtain the necessary resources to purchase the equipment to provide closed captioning and audio description. The 15-year,

operators other than representatives of drive-in theaters (which are not covered by this rule). The referenced comment from the movie theater trade association is the only comment by representatives of the theatrical or movie exhibition industry to address the potential impact of the captioning regulation on small theaters affected by this rule.

discounted costs for this alternative range from $189.4 million to $237.5 million under a 7 percent discount rate, which are higher than the total costs for the proposed rule.

Upon review of the higher cost burden for firms still using analog projection, and with consultation from the Small Business Administration's Office of Advocacy, and as previously discussed, the Department is considering two alternative options for theaters with analog screens: (1) A four-year compliance date for theaters with analog screens (Option 1); or (2) deferring application of the requirements to analog screens until a later date (Option 2). In making the decision, the Department also took into consideration the fact that those movie theaters that have not yet made the transition to digital systems are more likely to be small businesses than those movie theaters that are already exhibiting in digital format. The Department also considered publicly available information that movie studios are in the process of phasing out analog film, and it is anticipated that by 2015, studios will not be producing analog prints of first run films. On the basis of this information, it appears likely that movie theaters that rely on first-run films for revenue will either convert to digital or go out of business before the four-year compliance date (sometime in 2018 or 2019), and thus there will actually be many fewer analog theaters that will need to comply with the rule if the Department proceeds under Option 1. If the Department proceeds under Option 2, there will be fewer small business theaters affected by the rule, because it will only apply to small business digital theaters.

Question 21a: Significant Alternatives for Small Analog Theaters Under the RFA

Is the four-year compliance date in Option 1 reasonable for those screens that will remain analog? If not, why not? Should the Department adopt Option 2 and defer requiring theaters with analog screens to comply with the specific requirements of this rule? (See Questions 6 and 8).

Question 21b: Significant Alternatives for Small Digital Theaters Under the RFA

Is the proposed six-month compliance date for digital screens a reasonable timeframe to comply with the rule? Is six months enough time to order, install, and gain familiarity with the necessary equipment; train staff so that they can meaningfully assist patrons; and meet the notice requirement of the proposed rule? If the proposed six-month date is not reasonable, what should the compliance date be and why? (See Question 7).

Question 21c: Other Significant Alternatives for Small Theaters Under the RFA

The Department invites comment on ways to tailor this regulation to reduce unnecessary regulatory burdens on small businesses.[58] *For example: Should the Department have a different compliance schedule for digital or analog theaters that have annual receipts below a certain threshold? If so, what should the financial threshold be? (See Question 6). The Department is also interested in receiving comment and data on the use of the undue burden defense by small businesses.*

C. Executive Order 13132: Federalism

Executive Order 13132, 64 FR 43255 (Aug. 4, 1999), 3 CFR, 2000 comp. at 206, requires executive branch agencies to consider whether a rule will have federalism implications. That is, the rulemaking agency must determine whether the rule is likely to have substantial direct effects on State and local governments, a substantial direct effect on the relationship between the Federal government and the States and localities, or a substantial direct effect on the distribution of power and responsibilities among the different levels of government. If an agency believes that a rule is likely to have federalism implications, it must consult with State and local elected officials about how to minimize or eliminate the effects. This proposed rule applies to public accommodations that exhibit movies for a fee that are covered by title III of the ADA. To the Department's knowledge there are no State or local codes that specifically address captioning and audio description. As a result, the Department has concluded that this proposed rule does not have federalism implications.

D. Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department operates a toll-free ADA Information Line (800) 514–0301 (voice); (800) 514–0383 (TTY) that the public is welcome to call to obtain assistance in understanding anything in this proposed rule. If any commenter has suggestions for how the regulation could be written more clearly, please submit those suggestions by any one of the following methods, making sure to identify this rulemaking by RIN 1190–AA63:

- Federal eRulemaking Web site: *http://www.regulations.gov*. Follow the Web site's instructions for submitting comments. The Regulations.gov Docket ID is DOJ–CRT–126.
- Regular U.S. mail: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885.
- Overnight, courier, or hand delivery: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4039, Washington, DC 20005.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), agencies are prohibited from conducting or sponsoring a ''collection of information'' as defined by the PRA unless in advance the agency has obtained an OMB control number. 44 U.S.C. 3507 *et seq.* This proposed rule does not propose any new or revisions to existing collections of information covered by the PRA.

F. Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects for 28 CFR Part 36

Administrative practice and procedure, Buildings and facilities, Business and industry, Civil rights, Individuals with disabilities, Penalties, Reporting and recordkeeping requirements.

By the authority vested in me as Attorney General by law, including 28 U.S.C. 509 and 510, 5 U.S.C. 301, and section 306 of the Americans with Disabilities Act of 1990, Public Law 101–336 (42 U.S.C. 12186), and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

[58] *See* Memorandum for the Heads of Executive Departments and Agencies, Regulatory Flexibility, Small Business, and Job Creation, 76 FR 3827 (Jan. 18, 2011).

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

Subpart A—General

■ 1. The authority citation for 28 CFR part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b).

■ 2. In § 36.303,
■ a. Redesignate paragraph (g) as paragraph (h); and
■ b. Add paragraph (g) to read as follows:

§ 36.303 Auxiliary aids and services.

* * * * *

(g) *Movie Captioning and Audio Description.*

(1) *Definitions.* For the purposes of this paragraph—

(i) *Audio description* means provision of a spoken narration of key visual elements of a visually delivered medium, including, but not limited to, actions, settings, facial expressions, costumes, and scene changes.

(ii) *Closed movie captioning* means the written text of the movie dialogue and other sounds or sound making (*e.g.* sound effects, music, and the character who is speaking). Closed movie captioning is available only to individuals who request it. Generally, it requires the use of an individual captioning device to deliver the captions to the patron.

(iii) *Individual audio description listening device* means the individual device that patrons may use at their seats to hear audio description.

(iv) *Individual captioning device* means the individual device that patrons may use at their seats to view the closed captions.

(v) *Movie theater* means a facility other than a drive-in theater that is used primarily for the purpose of showing movies to the public for a fee.

(vi) *Open movie captioning* means the provision of the written text of the movie dialogue and other sounds or sound making in an on-screen text format that is seen by everyone in the movie theater.

(2) *Movie captioning.* (i) A public accommodation that owns, leases, leases to, or operates a movie theater shall ensure that its auditoriums have the capability to exhibit movies with closed movie captions. In all cases where the movies it intends to exhibit are produced, distributed, or otherwise made available with closed movie captions, the public accommodation shall ensure that it acquires the captioned version of that movie. Movie theaters must then exhibit such movies with closed movie captions available at all scheduled screenings of those movies.

(ii) *Other technologies.* Movie theaters may meet their obligation to provide captions to persons with disabilities through use of a different technology, such as open movie captioning, so long as the communication provided is as effective as that provided to movie patrons without disabilities. Open movie captioning at some or all showings of movies is never required as a means of compliance with this section, even if it is an undue burden for a theater to exhibit movies with closed movie captioning in an auditorium.

(iii) *Provision of individual captioning devices.* (A) Subject to the compliance dates in paragraph (g)(4) of this section, a public accommodation that owns, leases, leases to, or operates a movie theater shall provide individual captioning devices in accordance with the following Table. This requirement does not apply to movie theaters that elect to exhibit all movies at all times at that facility with open movie captioning.

Capacity of seating in movie theater	Minimum required number of individual captioning devices
100 or less	2.
101 to 200	2 plus 1 per 50 seats over 100 seats or a fraction thereof.
201 to 500	4 plus 1 per 50 seats over 200 seats or a fraction thereof.
501 to 1000	10 plus 1 per 75 seats over 500 seats or a fraction thereof.
1001 to 2000	18 plus 1 per 100 seats over 1000 seats or a fraction thereof.
2001 and over	28 plus 1 per 200 seats over 2000 seats or a fraction thereof.

(B) In order to provide effective communication, individual captioning devices must:

(*1*) Be adjustable so that the captions can be viewed as if they are on or near the movie screen;

(*2*) Be available to patrons in a timely manner;

(*3*) Provide clear, sharp images in order to ensure readability; and

(*4*) Be properly maintained and be easily usable by the patron.

(3) *Audio description.* (i) A public accommodation that owns, leases, leases to, or operates a movie theater shall ensure that its auditoriums have the capability to exhibit movies with audio description. In all cases where the movies it intends to exhibit are produced, distributed, or otherwise made available with audio description, the public accommodation shall ensure that it acquires the version with audio description. Movie theaters must then exhibit such movies with audio description available at all scheduled screenings.

(ii) *Provision of individual audio-description listening devices.* Subject to the compliance dates in paragraph (g)(4) of this section, a public accommodation that owns, leases, leases to, or operates a movie theater shall provide devices capable of transmitting audio description in accordance with one of the following:

(A) A movie theater shall provide at least one individual audio-description listening device per screen, except that no theater shall provide less than two devices.

(B) A movie theater may comply with this requirement by using receivers it already has available as assistive listening devices in accordance with the requirements in Table 219.3 of the 2010 Standards, if those receivers have a minimum of two channels available for sound transmission to patrons.

(4) *Compliance date.* (i) *Digital movie screens.* If a movie theater (as defined in this paragraph) has auditoriums with digital movie screens, those auditoriums must comply with the requirements in paragraph (g) of this section six months from the publication date of this rule in final form in the **Federal Register**. Once an analog movie screen has converted to digital cinema, it must comply with paragraph (g) within 6 months.

Option 1 for paragraph (g)(4)(ii):

(ii) *Analog movie screens.* If a movie theater (as defined in this paragraph) has auditoriums with analog movie screens, those auditoriums must comply with the requirements in paragraph (g) of this section four years from the publication date of this rule in final form in the **Federal Register**.

Option 2 for paragraph (g)(4)(ii):

(ii) *Analog movie screens.* Application of the requirements of paragraph (g) is deferred for analog movie screens but may be addressed in future rulemaking.

(5) *Notice.* Subject to the compliance dates in paragraph (g)(4) of this section, movie theaters shall ensure that communications and advertisements intended to inform potential patrons of movie showings and times, that are provided by the theater through Web sites, posters, marquees, newspapers, telephone, and other forms of communications, shall provide information regarding the availability of captioning and audio description for each movie.

(6) Subject to the compliance dates in paragraph (g)(4) of this section, movie theaters must ensure that there is at least one individual on location at each facility available to assist patrons seeking these services at all times when a captioned or audio-described movie is shown. Such assistance includes the ability to:

(i) Operate all captioning and audio description equipment;

(ii) Locate all necessary equipment that is stored and quickly activate the equipment and any other ancillary equipment or systems required for the use of the devices; and

(iii) Communicate effectively with individuals who are deaf or hard of hearing and blind or have low vision regarding the uses of, and potential problems with, the equipment for such captioning or audio description.

* * *

Dated: July 23, 2014.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2014–17863 Filed 7–31–14; 8:45 am]

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, *et al.*
Hazardous Materials: Proposed Rules

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, and 179

[Docket No. PHMSA–2012–0082 (HM–251)]

RIN 2137–AE91

Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA or we), in coordination with the Federal Railroad Administration (FRA), is proposing: new operational requirements for certain trains transporting a large volume of Class 3 flammable liquids; improvements in tank car standards; and revision of the general requirements for offerors to ensure proper classification and characterization of mined gases and liquids. These proposed requirements are designed to lessen the frequency and consequences of train accidents/incidents (train accidents) involving certain trains transporting a large volume of flammable liquids. The growing reliance on trains to transport large volumes of flammable liquids poses a significant risk to life, property, and the environment. These significant risks have been highlighted by the recent instances of trains carrying crude oil that derailed in Casselton, North Dakota; Aliceville, Alabama; and Lac-Mégantic, Quebec, Canada. The proposed changes also address National Transportation Safety Board (NTSB) safety recommendations on the accurate classification and characterization of such commodities, enhanced tank car construction, and rail routing.

DATES: Comments must be received by September 30, 2014.

ADDRESSES: You may submit comments identified by the docket number (Docket No. PHMSA–2012–0082 (HM–251)) and any relevant petition number by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this document at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office located at U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement at: *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ben Supko or Michael Stevens, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration or Karl Alexy, (202) 493–6245, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Frequently Used Abbreviations and Shortened Terms

AAR Association of American Railroads
ANPRM Advance notice of proposed rulemaking or PHMSA's ANPRM published September 6, 2013 in this rulemaking, depending on context
App. Appendix
CFR Code of Federal Regulations
CPC Casualty Prevention Circular
Crude oil Petroleum crude oil
DHS U.S. Department of Homeland Security
DOT U.S. Department of Transportation
DP Distributed power, an alternative brake signal propagation system
ECP brakes Electronically controlled pneumatic brakes, an alternative brake signal propagation system
EO 28 FRA Emergency Order No. 28 (78 FR 54849; August 7, 2013)
EOT device Two Way End-of-train device
FR **Federal Register**
FRA Federal Railroad Administration
GRL Gross Rail Load
HHFT High-Hazard Flammable Train
HMT Hazardous Materials Table at 49 CFR 172.101
HMR Hazardous Materials Regulations at 49 CFR Parts 171–180
LPG Liquefied petroleum gas
NAR Non-accident release, the unintentional release of a hazardous material while in transportation, including loading and unloading while in railroad possession, that is not caused by a derailment, collision, or other rail-related accident
NPRM Notice of proposed rulemaking
NTSB National Transportation Safety Board
OTMA One-time movement approval
PG Packing Group (see 49 CFR 171.8)
PIH Poison Inhalation Hazard
RIA Regulatory impact analysis
RSAC Railroad Safety Advisory Committee
RSPA Research and Special Programs Administration, the predecessor of PHMSA
SERCs State Emergency Response Commissions
T87.6 Task Force A task force of the AAR Tank Car Committee
TIH Toxic inhalation hazard or Toxic-by-Inhalation
TTC Tank Car Committee
TSA Transportation Security Administration
U.S.C. United States Code

Table of Contents of Supplementary Information

I. Executive Summary

Expansion in United States (U.S.) energy production has led to significant challenges in the transportation system. Expansion in oil production has led to increasing volumes of product transported to refineries. Traditionally, pipelines and oceangoing tankers have delivered the vast majority of crude oil to U.S. refineries, accounting for approximately 93 percent of total receipts (in barrels) in 2012. Although other modes of transportation—rail, barge, and truck—have accounted for a relatively minor portion of crude oil shipments, volumes have been rising very rapidly. With a growing domestic supply, rail transportation, in particular, has emerged as a flexible alternative to transportation by pipeline or vessel. The volume of crude oil carried by rail increased 423 percent between 2011 and 2012.[1] [2] Volumes continued to increase in 2013, as the number of rail carloads of crude oil surpassed 400,000.[3] U.S. ethanol production has also increased considerably during the last 10 years and has generated similar growth in the transportation of ethanol by rail.[4] The increase in shipments of large quantities of flammable liquids by rail has led to an increase in the number of train accidents, posing a significant safety and environmental concern.

In this NPRM, PHMSA is proposing revisions to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) that establish requirements for ''high-hazard flammable train'' (HHFT). This proposed rule defines a HHFT as a train comprised of 20 or more carloads of a Class 3 flammable liquid and ensures that the rail requirements are more closely aligned with the risks posed by the operation of these trains. As discussed further in this preamble and in our analysis, this rule primarily impacts unit train shipments of ethanol and crude oil; because ethanol and crude oil are most frequently transported in high volume shipments, typically in trains with 20 or more cars of those commodities. Currently, as shipped, crude oil and ethanol are typically classified as Class 3 flammable liquids. The primary intent of this rulemaking is to propose revisions to the HMR that update and clarify the regulations to prevent and mitigate the consequences of a train accident involving flammable liquids, should one occur. Table 1 identifies those affected by this NPRM and describes the regulatory changes.

TABLE 1—AFFECTED ENTITIES AND REQUIREMENTS

Proposed requirement	Affected entity
Better classification and characterization of mined gases and liquids	Offerors/Shippers of all mined gases and liquids.
• Written sampling and testing program for all mined gases and liquids, such as crude oil, to address: (1) frequency of sampling and testing; (2) sampling at various points along the supply chain; (3) sampling methods that ensure a representative sample of the entire mixture; (4) testing methods to enable complete analysis, classification, and characterization of material; (5) statistical justification for sample frequencies; and, (6) duplicate samples for quality assurance. Require offerer to certify that program is in place, document the testing and sampling program, and make program information available to DOT personnel, upon request.	
Rail routing risk assessment	Rail Carriers, Emergency Responders.
• Requires carriers to perform a routing analysis that considers 27 safety and security factors. The carrier must select a route based on findings of the route analysis. These planning requirements are prescribed in § 172.820 and would be expanded to apply to HHFTs.	
Notification to SERCs.	
• Require trains containing one million gallons of Bakken crude oil to notify State Emergency Response Commissions (SERCs) or other appropriate state delegated entity about the operation of these trains through their States.	
Reduced operating speeds.	
• Restrict all HHFTs to 50-mph in all areas.	
• PHMSA is requesting comment on three speed restriction options for HHFTs that contain any tank cars not meeting the enhanced tank car standards proposed by this rule:	

[1] See U.S. Rail Transportation of Crude Oil: Background and Issues for Congress; *http://fas.org/sgp/crs/misc/R43390.pdf.*

[2] See also ''Refinery receipts of crude oil by rail, truck, and barge continue to increase'' *http://www.eia.gov/todayinenergy/detail.cfm?id=12131.*

[3] *http://www.stb.dot.gov/stb/industry/econ_waybill.html.*

[4] Association of American Railroads. 2013. Railroads and Ethanol. Available online at *https://www.aar.org/keyissues/Documents/Background-Papers/Railroads%20and%20Ethanol.pdf.*

TABLE 1—AFFECTED ENTITIES AND REQUIREMENTS—Continued

Proposed requirement	Affected entity
(1) a 40-mph maximum speed restriction in all areas (2) a 40-mph speed restriction in high threat urban areas[5]; and, (3) a 40-mph speed restriction in areas with a 100K+ population. • PHMSA is also requesting comment on a 30-mph speed restriction for HHFTs that do not comply with enhanced braking requirements. *Enhanced braking.* • Require all HHFTs be equipped with alternative brake signal propagation systems. Depending on the outcome of the tank car standard proposal and implementation timing, all HHFTs would be operated with either electronic controlled pneumatic brakes (ECP), a two-way end of train device (EOT), or distributed power (DP).	
Enhanced standards for both new and existing tank cars	Tank Car Manufacturers, Tank Car owners, Shippers and Rail Carriers.
• Require new tank cars constructed after October 1, 2015 (that are used to transport flammable liquids as part of a HHFT) to meet criteria for a selected option, including specific design requirements or performance criteria (e.g., thermal, top fittings, and bottom outlet protection; tank head and shell puncture resistance). PHMSA is requesting comment on the following three options for the DOT Specification 117: 1. FRA and PHMSA Designed Car, or equivalent 2. AAR 2014 Tank Car,[6] or equivalent 3. Jacketed CPC–1232,[7] or equivalent • Require existing tank cars that are used to transport flammable liquids as part of a HHFT, to be retrofitted to meet the selected option for performance requirements, except for top fittings protection. Those not retrofitted would be retired, repurposed, or operated under speed restrictions for up to five years, based on packing group assignment of the lading.	

Table 2 further summarizes the three options for the DOT Specification 117. As noted in Table 1, PHMSA proposes to require one of these options for new tank cars constructed after October 1, 2015, if those tank cars are used as part of HHFT. In addition, for all three Options, PHMSA proposes the following timelines for tank cars used as part of HHFT: (1) For Packing Group I, DOT Specification 111 tank cars are not authorized after October 1, 2017; (2) for Packing Group II, DOT Specification 111 tank cars are not authorized after October 1, 2018; and (3) for Packing Group III, DOT Specification 111 tank cars are not authorized after October 1, 2020.

TABLE 2—SAFETY FEATURES BY TANK CAR OPTION

Tank car	Bottom outlet handle	GRL (lbs)	Head shield type	Pressure relief valve	Shell thickness	Jacket	Tank material *	Top fittings protection **	Thermal protection system	Braking
Option 1: PHMSA and FRA Designed Tank Car.	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident.	286k	Full-height, ½ inch thick head shield.	Reclosing pressure relief device.	9/16 inch Minimum.	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weather-tight.	TC–128 Grade B, normalized steel.	TIH Top fittings protection system and nozzle capable of sustaining, without failure, a rollover accident at a speed of 9 mph.	Thermal protection system in accordance with § 179.18.	ECP brakes.

[5] As defined in 49 CFR 1580.3—High Threat Urban Area (HTUA) means an area comprising one or more cities and surrounding areas including a 10-mile buffer zone, as listed in appendix A to Part 1580 of the 49 CFR.

[6] On March 9, 2011 AAR submitted petition for rulemaking P–1577, which was discussed in the ANPRM. In response to the ANPRM, on November 15, 2013, AAR and ASLRAA submitted as a comment recommendations for tank car standards that are enhanced beyond the design in P–1577. For the purposes of this rulemaking this tank car will be referred to as the ''AAR 2014 tank car.'' See *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-0090.*

[7] In 2011, the AAR issued Casualty Prevention Circular (CPC) 1232, which outlines industry requirements for additional safety equipment on certain DOT Specification 111 tanks ordered after October 1, 2011, and intended for use in ethanol and crude oil service.

TABLE 2—SAFETY FEATURES BY TANK CAR OPTION—Continued

Tank car	Bottom outlet handle	GRL (lbs)	Head shield type	Pressure relief valve	Shell thickness	Jacket	Tank material *	Top fittings protection **	Thermal protection system	Braking
Option 2: AAR 2014 Tank Car.	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident.	286k	Full-height, ½ inch thick head shield.	Reclosing pressure relief device.	9/16 inch Minimum.	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weathertight.	TC–128 Grade B, normalized steel.	Equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1.	Thermal protection system in accordance with § 179.18.	In trains with DP or EOT devices.
Option 3: Enhanced CPC 1232 Tank Car.	Bottom outlet handle removed or designed to prevent unintended actuation during a train accident.	286k	Full Height ½ inch thick head shield.	Reclosing pressure relief device.	7/16 inch Minimum.	Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weathertight.	TC–128 Grade B, normalized steel.	Equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1.	Thermal protection system in accordance with § 179.18.	In trains with DP or EOT devices.
DOT 111A100W1. Specification (Currently Authorized).	Bottom Outlets are Optional.	263K	Optional; Bare Tanks half height; Jacket Tanks full height.	Reclosing pressure relief valve.	7/16 inch Minimum.	Jackets are optional.	TC–128 Grade B, normalized steel.*	Not required, but when Equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1.	Optional	Not required.

* For the purposes of this figure, TC–128 Grade B normalized steel is used to provide a consistent comparison to the proposed options. Section 179.200–7 provides alternative materials which are authorized for the DOT Specification 111.

** Please note that the PHMSA does not propose to require additional top fittings protection for retrofits, because the costs are not supported by corresponding benefits. Newly constructed cars, however, are required to have additional top fittings protection. Except for additional top fittings protection, the requirements for newly constructed tank cars and retrofits are the same.

The transportation of large volumes of flammable liquids poses a risk to life, property, and the environment. The volume of flammable liquids shipped by rail and in HHFTs has been increasing rapidly since 2006, representing a growing risk. Therefore, we are reevaluating the structure of the HMR as they pertain to rail transportation. Approximately 68 percent of the flammable liquids transported by rail are comprised of crude oil or ethanol. The U.S. is now the global leader in crude oil production growth. According to the rail industry, in 2009, there were 10,800 carloads of crude oil originations transported by Class I railroads, and in 2013, there were over 400,000 carloads of crude oil originations by Class I railroads, or 37 times as many in the U.S.[8] Crude oil production from the Bakken region of the Williston Basin is now over one million barrels per day.[9]

U.S. ethanol production has increased considerably during the last 10 years and has generated similar growth in the transportation of ethanol by rail, according to a recent white paper by the Association of American Railroads (AAR).[10] In 2008 there were around 292,000 rail carloads of ethanol. In 2011, that number increased over 40 percent, to 409,000.[11] Not surprisingly, this growth in rail traffic has been accompanied by an increase in the number of rail derailments and accidents involving ethanol.

As the number of shipments of crude oil in HHFTs has increased, the number of mainline train accidents involving crude oil has increased from zero in 2010 to five in 2013 and thus far five in 2014.[12] This increase comes at a time when, across the entire rail network, the number of train accidents and hazardous materials releases are decreasing; while total shipment volume has increased, the total number of train accidents has declined by 43 percent since 2003, and accidents involving a hazardous materials release has declined by 16 percent since 2003.[13] The projected continued growth of domestic crude oil production, and the growing number of train accidents involving crude oil, PHMSA concludes that the potential for future severe train accidents involving crude oil in HHFTs has increased substantially. Such an increase raises the likelihood of higher-consequence train accidents.

Recent accidents highlight the potentially severe consequences of accidents involving HHFTs carrying crude oil. On December 30, 2013, a train transporting grain derailed onto another track into the path of a train transporting crude oil, which had too little time to stop before it collided with the grain train, and then itself derailed and unintentionally released product, which ignited near Casselton, North

[8] Association of American Railroads. 2013. Moving Crude by Rail. December. Available online at: *http://dot111.info/wp-content/uploads/2014/01/Crude-oil-by-rail.pdf.*

[9] Information regarding oil and gas production is available at the following URL: *http://www.eia.gov/petroleum/drilling/#tabs-summary-2.*

[10] Association of American Railroads. 2013. Railroads and Ethanol. Available online at *https://www.aar.org/keyissues/Documents/Background-Papers/Railroads%20and%20Ethanol.pdf.*

[11] *http://www.stb.dot.gov/stb/industry/econ_waybill.html.*

[12] Source: PHMSA Hazmat Inelegance Portal (HIP), February 2014.

[13] Data from compiled by FRA's Office of Safety Analysis.

Dakota, prompting authorities to issue a voluntary evacuation of the city and surrounding area. On November 8, 2013, a train transporting crude oil to the Gulf Coast from North Dakota derailed in Aliceville, Alabama, spilling crude oil in nearby wetlands ignited. On July 6, 2013, a catastrophic railroad accident occurred in Lac-Mégantic, Quebec, Canada, when an unsecured and unattended freight train transporting crude oil rolled down a descending grade and subsequently derailed, resulting in the unintentional release of lading from multiple tank cars. The subsequent fires and explosions, along with other effects of the accident, resulted in the deaths of 47 individuals. In addition, the derailment caused extensive damage to the town center, a release of hazardous materials resulting in a massive environmental impact that will require substantial clean-up costs, and the evacuation of approximately 2,000 people from the surrounding area.

Accidents involving HHFTs transporting ethanol can also cause severe damage. On August 5, 2012, a train derailed 18 of 106 cars, 17 of which were carrying ethanol, near Plevna, MT. Twelve of the 17 cars released lading and began to burn, causing two grass fires, a highway near the site to be closed, and over $1 million in damages. On October 7, 2011, a train derailed 26 loaded freight cars (including 10 loaded with ethanol) approximately one-half mile east of Tiskilwa, IL. The release of ethanol and resulting fire initiated an evacuation of about 500 residents within a ½-mile radius of the accident scene, and resulted in damages over $1.8 million. On June 19, 2009, near Rockford, IL, a train derailed 19 cars, all of which contained ethanol, and 13 of the derailed cars caught fire. The derailment destroyed a section of single main track and an entire highway-rail grade crossing. As a result of the fire that erupted after the derailment, a passenger in one of the stopped cars was fatally injured, two passengers in the same car received serious injuries, and five occupants of other cars waiting at the highway/rail crossing were injured. Two responding firefighters also sustained minor injuries. The release of ethanol and resulting fire initiated a mandatory evacuation of about 2,000 residents within a ½-mile radius of the accident scene and damages of approximately $1.7 million. The EPA estimated that 60,000 gallons of ethanol spilled into an unnamed stream, which flowed near the Rock and Kishwaukee Rivers.

The following table highlights the risk of HHFTs by summarizing the impacts of selected major train accidents involving trains of Class 3 flammable liquid.

TABLE 3—MAJOR CRUDE OIL/ETHANOL TRAIN ACCIDENTS IN THE U.S.

[2006–2014]

Location	Date (MM/YY)	Number of tank cars derailed	Number of crude oil/ethanol cars penetrated	Speed at derailment in miles per hour (mph)	Material and type of train	Product loss (gallons of crude or ethanol)	Fire	Type of train accident or cause of train accident
LaSalle, CO	05/14	5	1	9	Crude Oil (unit)	5,000	No	To Be Determined (TBD).
Lynchburg, VA	04/14	17	2	23	Crude Oil (unit)	30,000	Yes	TBD.
Vandergrift, PA	02/14	21	4	31	Crude Oil	10,000	No	TBD.
New Augusta, MS	01/14	26	25	45	Crude Oil	90,000	No	TBD.
Casselton, ND	12/13	20	18	42	Crude Oil (unit)	476,436	Yes	Collision.
Aliceville, AL	11/13	26	25	39	Crude Oil (unit)	630,000	Yes	TBD.
Plevna, MT	08/12	17	12	25	Ethanol	245,336	Yes	TBD.
Columbus, OH	07/12	3	3	23	Ethanol	53,347	Yes	TBD—NTSB Investigation.
Tiskilwa, IL	10/11	10	10	34	Ethanol	143,534	Yes	TBD—NTSB Investigation.
Arcadia, OH	02/11	31	31	46	Ethanol (unit)	834,840	Yes	Rail Defect.
Rockford/Cherry Valley, IL.	06/09	19	13	19	Ethanol (unit)	232,963	Yes	Washout.
Painesville, OH	10/07	7	5	48	Ethanol	76,153	Yes	Rail Defect.
New Brighton, PA	10/06	23	20	37	Ethanol (unit)	485,278	Yes	Rail Defect.

Note 1. The term ''unit'' as used in this chart means that the train was made up only of cars carrying that single commodity, as well as any required non-hazardous buffer cars and the locomotives.
Note 2. All accidents listed in the table involved HHFTs.
Note 3. All crude oil or crude oil/LPG accidents involved a train transporting over 1 million gallons of oil.

While not all accidents involving crude oil and ethanol release as much product or have as significant consequences as those shown in this table, these accidents indicate the potential harm from future releases. Table 4 provides a brief summary of the justifications for each provision in this NPRM, and how each provision will address the safety risks described previously.

TABLE 4—RULEMAKING PROVISIONS AND SAFETY JUSTIFICATIONS

Provision	Justification
Rail Routing	PHMSA is proposing routing requirements to reduce the risk of a train accident. This proposal requires railroads to balance the risk factors to identify the route that poses the lower risk. As such, they may, in certain cases, choose a route that eliminates exposure in areas with high population densities but poses a risk for more frequent events in areas with very low densities. In other cases the risk of derailment may be so low along a section of track that, even though it runs through a densely populated area, it poses the lowest total risk when severity and likelihood are considered.
Classification of Mined Gas and Liquid.	PHMSA is proposing to require a sampling and testing program for mined gas and liquid, such as crude oil. PHMSA expects the proposed requirements would reduce the expected non-catastrophic damages and ensure that materials are properly classified in accordance with the HMR.
Notification to SERCs	PHMSA is proposing to codify the May 7, 2014, DOT issued an Emergency Restriction/Prohibition Order in Docket No. DOT–OST–2014–0067 (EO or Order). Recent accidents have demonstrated the need for action in the form of additional communication between railroads and emergency responders to ensure that the emergency responders are aware of train movements carrying large quantities of crude oil through their communities.
Speed Restrictions	PHMSA is proposing to restrict the speed of HHFTs. Speed is a factor that may contribute to derailments. Speed can influence the probability of an accident, as lower speeds may allow for a brake application to stop the train before a collision. Speed also increases the kinetic energy of a train, resulting in a greater possibility of the tank cars being punctured in the event of a derailment. The proposed restrictions will reduce the frequency and severity of train accidents.
Braking	To reduce the number of cars and energy associated with train accidents, PHMSA is proposing to require alternative brake signal propagation systems: Distributed power (DP), or two-way end of train devices (EOT); for tank car Option 1, electronic controlled pneumatic brakes (ECP)
Tank Car Specifications	PHMSA is proposing a new DOT Specification 117 tank car to address the risks associated with the rail transportation of ethanol and crude oil and the risks posed by HHFTs. All tank car Options for the DOT Specification 117 incorporate several enhancements to increase puncture resistance; provide thermal protection to survive a 100-minute pool fire; and protect top fitting (new construction only) and bottom outlets during a derailment. Under all Options, the proposed system of design enhancements would reduce the consequences of a derailment of tank cars carrying crude oil or ethanol. There would be fewer car punctures, fewer releases from the service equipment (top and bottom fittings), and delayed release of flammable liquid from the tank cars through the pressure relief devices.

The consequences of train accidents and increase in the rail transportation of flammable liquids highlight the need to review existing regulations and industry practices related to such transportation. PHMSA and FRA are focused on reducing the risks posed by HHFTs and are taking action to prevent accidents from occurring and to mitigate the consequences when accidents do occur. PHMSA and FRA's actions to date demonstrate their focus on reducing risk associated with the rail transportation of large quantities of flammable liquids. PHMSA and FRA actions include: (1) Issuing FRA's Emergency Order No. 28 (EO 28) (78 FR 48218) published on August 7, 2013 stressing train securement; (2) issuing two Joint Safety Advisories published on August 7, 2013 (78 FR 48224) and November 20, 2013 (78 FR 69745) stressing the importance of security planning and proper characterization and classification of crude oil; (3) initiating a comprehensive review of operational factors that impact the transportation of hazardous materials by rail in a public meeting held on August 27–28, 2013 (78 FR 42998); (4) referring safety issues related to EO 28 and the August 7, 2013 Joint Safety Advisory to FRA's Railroad Safety Advisory Committee (RSAC); (5) issuing an emergency order on February 25, 2014, which was revised and amended on March 6, 2014 requiring that all rail shipments of crude oil that is properly classed as a flammable liquid in Packing Group (PG) III material be treated as a PG I or II material; [14] (6) issuing an emergency order on May 7, 2014, requiring all railroads that operate trains containing one million gallons of Bakken crude oil to notify SERCs about the operation of these trains through their States; [15] (7) issuing a Safety Advisory on May 7, 2014, urging carriers transporting Bakken crude oil by rail to select and use tank cars of the highest integrity to transport the material; [16] and (8) publishing the September 6, 2013, advance notice of proposed rulemaking (ANPRM) responding to eight petitions for rulemaking and four NTSB Safety Recommendations related to the transportation of hazardous materials by rail (78 FR 54849).

In addition to these eight actions, PHMSA issued a Safety Alert on January 2, 2014, warning of potential crude oil variability and emphasizing the proper and sufficient testing to ensure accurate characterization and classification. The Safety Alert expressed PHMSA's concern that unprocessed crude oil may affect the integrity of packaging or present additional hazards related to corrosivity, sulfur content, and dissolved gas content.[17] To address these risks, this NPRM is proposing additional requirements for a sampling plan that would include proper characterization, classification, and selection of a hazardous material's Packing Group. Further, the NPRM is proposing to expand the routing requirements under subpart I of part 172 of the HMR to include HHFTs. Through its speed, tank car, braking, and notification requirements, this NPRM is intended to take a comprehensive approach to the risks of HHFTs.

PHMSA has prepared and placed in the docket a Regulatory Impact Analysis (RIA) addressing the economic impact of this proposed rule. Table 5 shows the costs and benefits by affected section and rule provision over a 20 year period, discounted at a 7% rate. Please note that because there is overlap in the risk reduction achieved between some of the proposed requirements listed in

[14] See Docket No. DOT–OST–2014–0025. See also *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Amended_Emergency_Order_030614.pdf.*

[15] *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_D9E224C13963CAF0AE4F15A8B3C4465BAEAF0100/filename/Final_EO_on_Transport_of_Bakken_Crude_Oi_05_07_2014.pdf.*

[16] *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_9084EF057B3D4E74A2DEB5CC86006951BE1D0200/filename/Final_FRA_PHMSA_Safety_Advisory_tank_cars_May_2014.pdf.*

[17] See *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_111F295A99DD05D9B698AE8968F7C1742DC70000/filename/1_2_14%20Rail_Safety_Alert.pdf.*

Table 5, the total benefits and costs of the provisions cannot be accurately calculated by summing the benefits and costs of each proposed provision. For example, the benefits for tank car Option 1, the PHMSA and FRA Designed Car, include benefits that are also presented as part of the benefits for the proposed ''Braking'' requirements at 49 CFR 174.130. Table 6 shows an explanation of the comprehensive benefits and costs (i.e., the combined effects of individual provisions), and the estimated benefits, costs, and net benefits of each proposed scenario.

Please also note that, given the uncertainty associated with the risks of crude oil and ethanol shipments, Table 5 contains a range of benefits estimates. The low end of the range of estimated benefits estimates risk from 2015 to 2034 based on the U.S. safety record for crude oil and ethanol from 2006 to 2013, adjusting for the projected increase in shipment volume over the next 20 years. Absent this proposed rule, we predict about 15 mainline derailments for 2015, falling to a prediction of about 5 mainline derailments annually by 2034. The high end of the range of estimated benefits includes the same estimate of 5 to 15 annual mainline derailments predicted, based on the U.S. safety record, plus an estimate that the U.S. would experience an additional 10 safety events of higher consequence—nine of which would have environmental damages and monetized injury and fatality costs exceeding $1.15 billion per event and one of which would have environmental damages and monetized injury and fatality costs exceeding $5.75 billion—over the next 20 years.

TABLE 5—20 YEAR COSTS AND BENEFITS BY STAND-ALONE PROPOSED REGULATORY AMENDMENTS 2015–2034 [18]

Affected section [19]	Provision	Benefits (7%)	Costs (7%) (millions)
49 CFR 172.820	Rail Routing+	Cost effective if routing were to reduce risk of an incident by 0.17%.	$4.5
49 CFR 173.41	Classification of Mined Gas and Liquid	Cost effective if this requirement reduces risk by 0.61%.	16.2
49 CFR 174.310	Notification to SERCs	Qualitative	0
	Speed Restriction: Option 1: 40 mph speed limit all areas*.	$199 million–$636 million	2,680
	Speed Restriction: Option 2: 40 mph 100k people*.	$33.6 million–$108 million	240
	Speed Restriction: Option 3: 40 mph in HTUAs*	$6.8 million–$21.8 million	22.9
	Braking: Electronic Pneumatic Control with DP or EOT#.	$737 million–$1,759 million	500
49 CFR Part 179	Option 1: PHMSA and FRA designed car @	$822 million–$3,256 million	3,030
	Option 2: AAR 2014 Tank Car	$610 million–$2,426 million	2,571
	Option 3: Jacketed CPC–1232 (new const.)	$393 million–$1,570 million	2,040

Note: ''*'' indicates voluntary compliance regarding crude oil trains in high-threat urban areas (HTUA).
''+'' indicates voluntary actions that will be taken by shippers and railroads.
''#'' indicates that only tank car Option 1, the PHMSA and FRA designed car, has a requirement for ECP brakes. However, all HHFTs would be required to have DP or two-way EOT, regardless of which tank car Option is selected at the final rule stage.

TABLE 6—20 YEAR BENEFITS AND COSTS OF PROPOSAL COMBINATIONS OF PROPOSED REGULATORY AMENDMENTS 2015–2034 [20]

Proposal	Benefit Range (millions)	Cost (millions)
PHMSA and FRA Design Standard + 40 MPH System Wide	$1,436–$4,386	$5,820
PHMSA and FRA Design Standard + 40 MPH in 100K	$1,292–$3,836	3,380
PHMSA and FRA Design Standard + 40 MPH in HTUA	$1,269–$3,747	3,163
AAR 2014 Standard + 40 MPH System Wide	$794–$3,034	5,272
AAR 2014 Standard + 40 MPH in 100K	$641–$2,449	2,831
AAR 2014 Standard + 40 MPH in HTUA	$616–$2,354	2,614
CPC 1232 Standard + 40 MPH System Wide	$584–$2,232	4,741
CPC 1232 Standard + 40 MPH in 100K	$426–$1,626	2,300
CPC 1232 Standard + 40 MPH in HTUA	$400–$1,527	2,083

II. Overview of Current Regulations Relevant to This Proposal

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101–5128) authorizes the Secretary of Transportation (Secretary) to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' The Secretary has delegated this authority to PHMSA. 49 CFR 1.97(b). PHMSA is responsible for overseeing a hazardous materials safety program that minimizes the risks to life and property inherent in transportation in commerce. The HMR provide safety and security requirements for shipments valued at

[18] All costs and benefits are in millions over 20 years, and are discounted to present value using a 7 percent rate.

[19] All affected sections of the Code of Federal Regulations (CFR) are in Title 49.

[20] All costs and benefits are in millions, and are discounted to present value using a 7 percent rate.

more than $1.4 trillion annually.[21] The HMR are designed to achieve three goals: (1) To ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) to provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and (3) to minimize the consequences of an incident should one occur. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety or security hazard, thus reducing the probability and quantity of a hazardous material release.

Under the HMR, hazardous materials are categorized by analysis and experience into hazard classes and packing groups based upon the risks that they present during transportation. The HMR specify appropriate packaging and handling requirements for hazardous materials based on such classification, and require an offeror to communicate the material's hazards through the use of shipping papers, package marking and labeling, and vehicle placarding. The HMR also require offerors to provide emergency response information applicable to the specific hazard or hazards of the material being transported. Further, the HMR mandate training for persons who prepare hazardous materials for shipment or who transport hazardous materials in commerce and require the development and implementation of plans to address security risks related to the transportation of certain types and quantities of hazardous materials in commerce, including additional planning requirements for transportation by rail (e.g., the routing of the material).

The HMR also include operational requirements applicable to each mode of transportation. The Secretary has authority over all areas of railroad transportation safety (Federal railroad safety laws, principally 49 U.S.C. chapters 201–213), and delegates this authority to FRA. 49 CFR 1.89. FRA inspects and audits railroads, tank car facilities, and offerors for compliance with both FRA and PHMSA regulations. FRA also has an extensive, well-established research and development program to enhance all elements of railroad safety including hazardous materials transportation.

As a result of the shared role in the safe and secure transportation of hazardous materials by rail, PHMSA and FRA work very closely when considering regulatory changes. Regarding rail safety and security, PHMSA and FRA take a system-wide, comprehensive approach consistent with the risks posed by the bulk transport of hazardous materials by rail. To address our concerns regarding the risks associated with mined liquids and gases (like crude oil), and HHFTs, we are focusing on three areas: (1) Proper classification and characterization; (2) operational controls to lessen the likelihood and consequences of accidents; and (3) improvements to tank car integrity. This approach is designed to minimize the occurrence of train accidents and mitigate the damage caused should an accident occur.

As described throughout this NPRM, PHMSA and FRA have relied on a variety of regulatory and non-regulatory methods to address concerns regarding HHFTs. These efforts have included issuing guidance, initiating rulemakings, participating in transportation safety committees, holding public meetings with the regulated community and other stakeholders, enhancing enforcement efforts, reaching out to the public, and addressing tank car integrity and freight rail safety in general. All of these efforts have been consistent with our system safety approach. We are confident that collectively these actions have provided and will continue to provide valuable rail safety enhancements, information and guidance to the regulated community, and improve overall safety for the public.

This overview section provides a general discussion of the current regulations that affect the safety of HHFTs. These issues include: (1) Proper classification and characterization of the hazardous materials offered for transportation; (2) packagings authorized for the materials transported in HHFTs; (3) the role of track integrity in preventing train accidents; (4) oil spill response plans; and (5) routing of trains based on an assessment of the safety and security risks along routes.

A. Classification and Characterization of Mined Liquids and Gases

The proper classification and characterization of a hazardous material is a key requirement under the HMR, as it dictates which other requirements apply, such as specific operational controls and proper packaging selection. Classification is simply ensuring the proper hazard class and packing group (if applicable) are assigned to a particular material. Characterization is a complete description of the properties of a material during the transportation cycle. Characterization includes the identification of the effects a material has on both the reliability and safety of the packaging that contains it. Proper classification and characterization is especially important when dealing with a material such as mined liquids and gases, including crude oil, as these materials' properties are variable. Crude oil's properties are not easily understood and the characterization may vary considerably based on time, location, method of extraction, temperature at time of extraction or processing, and the type and extent of processing of the material. In contrast, the classification and characterization of manufactured products is generally well understood and consistent.

Under § 173.22 of the HMR, it is the offeror's responsibility to properly ''class and describe the hazardous material in accordance with parts 172 and 173 of the HMR.'' When a single material meets more than one hazard class, it must be classed based on the hazard precedence table in § 173.2a. Once an offeror determines the hazard class of a material, the offeror must then select the most appropriate proper shipping name from the § 172.101 Hazardous Materials Table (HMT).

In the case of crude oil, relevant properties to properly classify a flammable liquid include: Flash point, and boiling point (See section 173.120). The HMR does not specifically provide requirements for characterization tests however; relevant properties that may affect the characterization of crude oil include corrosivity, vapor pressure, specific gravity at loading and reference temperatures, and the presence and concentration of specific compounds such as sulfur. Characterization of certain properties enables an offeror to select the most appropriate shipping name, and identify key packaging considerations. Based on the shipping name the HMT provides the list of packagings authorized for use by the HMR. As indicated in § 173.24(e), even though certain packagings are authorized, it is the responsibility of the offeror to ensure that such packagings are compatible with their lading. Such information and determination of the authorized packaging also ensure that the appropriate outage is maintained in accordance with § 173.24(a).

Crude oil transported by rail is often derived from different sources and is then blended, complicating proper classification and characterization of the material. PHMSA and FRA audits of crude oil loading facilities, prior to the issuance of the February 26, 2014 Emergency Restriction/Prohibition

[21] 2007 Commodity Flow Survey, Research and Innovative Technology Administration, Bureau of Transportation Statistics.

Order, indicate that the classification of crude oil being transported by rail was often based solely on a generic Safety Data Sheet (SDS). The data on these sheets only provide a material classification and a range of material properties. This SDS information is typically provided by the consignee (the person to whom the shipment is to be delivered) to the offeror. In these instances, it is possible no validation of the crude oil properties took place. Further, FRA's audits indicate that SDS information is often not gleaned from any recently conducted analyses or from analyses of the many different sources (wells) of the crude oil.

Improper classification and characterization can also impact operational requirements under the HMR. Offerors and carriers must ensure that outage is considered when loading a tank car. Section 173.24b(a) of the HMR prescribes the minimum tank car outage for hazardous materials at one percent at a reference temperature that is based on the existence of tank car insulation. A crude oil offeror must know the specific gravity of the hazardous material at the reference temperature as well as the temperature and specific gravity of the material at that temperature when loaded. This information is then used to calculate the total quantity that can be safely loaded into the car to comply with the one percent outage requirement. If the outage is not properly calculated because the material's specific gravity is unknown (or is provided as a range), the tank car could be loaded such that if the temperature increases during transportation, the tank will become shell-full, increasing the likelihood of a leak from the valve fittings or manway, and increase risk during a train accident.

Since 2004, approximately 10 percent of the one-time movement approval (OTMA) requests that FRA has received under the requirements of 49 CFR 174.50 have been submitted to move overloaded tank cars. Of these requests, 33 percent were tank cars containing flammable liquids. FRA notes that tank cars overloaded by weight are typically identified when the tank cars go over a weigh-in-motion scale at a railroad's classification yard. As previously indicated, crude oil and ethanol are typically moved in HHFTs, and the cars in these trains are generally moved as a single block in a ''through'' priority or ''key train.'' [22] As a result, the train is not broken up in a classification yard for individual car routing purposes, and cars do not typically pass over weigh-in-motion scales in classification yards. Therefore, it is unlikely that FRA would receive many OTMA requests for overloaded tank cars containing crude oil, suggesting that there is a potential of underreporting. Overloads of general service flammable liquid tank cars should not be confused with any excess capacity issues. We do not have information that shippers are filling the excess capacity available to them.

Moreover, crude oil accounted for the most non-accident releases (NARs) [23] by commodity in 2012, nearly doubling the next highest commodity (alcohols not otherwise specified, which accounts for a comparable annual volume transported by rail). FRA's data indicate that 98 percent of the NARs involved loaded tank cars. Product releases through the top valves and fittings of tank cars when the hazardous material expands during transportation. This suggests that loading facilities may not know the specific gravity of the hazardous materials loaded into railroad tank cars, resulting in a lack of sufficient outage.

Commenters to the ANPRM noted incidents involving damage to tank cars in crude oil service in the form of severe corrosion of the internal surface of the tank, manway covers, and valves and fittings. A possible cause is contamination of the crude oil by materials used in the fracturing process that are corrosive to the tank car tank and service equipment. Therefore, when crude oil is loaded into tank cars, it is critical that the existence and concentration of specific elements or compounds be identified, along with the corrosivity of the materials to the tank cars and service equipment. Proper identification also enables an offeror, in coordination with the tank car owner, to determine if there is a need for an interior coating or lining, alternative materials of construction for valves and fittings, and performance requirements for fluid sealing elements, such as gaskets and o-rings. These steps will help ensure the reliability of the tank car until the next qualification event.

For the reasons outlined above, proper classification and characterization of hazardous materials is critical to ensuring that materials are packaged and transported safely. The HMR do not prescribe a specific test frequency for classification and characterization of hazardous materials. However, as provided in § 173.22, the regulations clearly intend for the frequency and type of testing to be based on an offeror's knowledge of the hazardous material, with specific consideration given to the volume of hazardous material shipped, the variety of the sources of the hazardous material, and the processes used to generate the hazardous material. Once an offeror has classified and characterized the material; selected the appropriate packaging; loaded the packaging; and marked, labeled, and placarded in accordance with the HMR, the offeror must ''certify'' the shipment.

Section 172.204 of the HMR currently requires the offeror of the hazardous material to ''certify that the material is offered for transportation in accordance with this subchapter.'' Certification is a very important step in the transportation process. The certification indicates the HMR was followed and that all requirements have been met. The shipper's certification must include either of the following statements:

> This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.
>
> or—
>
> I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations.

As such, ultimately, the offeror is responsible for certifying a correct classification, and while the HMR do not specifically prescribe a frequency for classification, it requires an offeror to consider each hazard class in accordance with the defined HMR test protocol. As previously discussed, improper classification and characterization can have serious ramifications that could impact transportation safety.

On January 23, 2014, in response to its investigation of the Lac-Mégantic accident, the NTSB issued three recommendations to PHMSA and FRA.

[22] On August 5, 2013, AAR published Circular No. OT–55–N. This document supersedes OT–55–M, issued October 1, 2012. The definition of a ''key train'' was revised to include ''20 car loads or portable tank loads of any combination of hazardous material.'' Therefore, the maximum speed of these trains is limited to 50 MPH. The document is available in the public docket for this proceeding and at the following URL: *http://www.aar.com/CPC-1258%20OT-55-N%208-5-13.pdf.*

[23] According to the AAR, a non-accident release (NAR) is the unintentional release of a hazardous material while in transportation, including loading and unloading while in railroad possession, which is not caused by a derailment, collision, or other rail-related accident. NARs consist of leaks, splashes, and other releases from improperly secured or defective valves, fittings, and tank shells and also include venting of non-atmospheric gases from safety release devices.

Safety Recommendation R–14–6 requested that PHMSA require shippers to sufficiently test and document the physical and chemical characteristics of hazardous materials to ensure the proper classification, packaging, and record-keeping of products offered in transportation. These and other NTSB Safety Recommendation and the corresponding PHMSA responses are discussed in further detail in Section C of the background portion of this document.

B. Packaging

For each proper shipping name, bulk packaging requirements are provided in Column (8C) of the HMT. For most flammable liquids, the authorized packaging requirements for a PG I material are provided in § 173.243 and for PGs II and III in § 173.242. The following table is provided as a general guide for the packaging options for rail transport provided by the HMR for a flammable and combustible liquids.

TABLE 7—TANK CAR OPTIONS [24]

Flammable liquid, PG I	Flammable liquid, PG II and III	Combustible Liquid
DOT 103	DOT 103	DOT 103.
DOT 104	DOT 104	DOT 104.
DOT 105	DOT 105	DOT 105.
DOT 109	DOT 109	DOT 109.
DOT 111	DOT 111	DOT 111.
DOT 112	DOT 112	DOT 112.
DOT 114	DOT 114	DOT 114.
DOT 115	DOT 115	DOT 115.
DOT 120	DOT 120	DOT 120.
	AAR 206W	AAR 206W.
		AAR 203W.
		AAR 211W.

Note 1. Sections 173.241, 173.242, and 173.243 authorize the use of the above tank cars.
Note 2. DOT 103, 104,105, 109, 112, 114, and 120 tank cars are pressure tank cars (HMR; Part 179, Subpart C).
Note 3. DOT 111 and 115 tank cars are non-pressure tank cars (HMR; Part 179, Subpart D).
Note 4. AAR 203W, AAR 206W, and AAR 211W tank cars are non-DOT specification tank cars that meet AAR standards. These tank cars are authorized under § 173.241 of the HMR (see Special Provision B1, as applicable).
Note 5. DOT 114 and DOT 120 pressure cars are permitted to have bottom outlets and, generally, would be compatible with the DOT 111.

The offeror must select a packaging that is suitable for the properties of the material and based on the packaging authorizations provided by the HMR. With regard to package selection, the HMR require in § 173.24(b) that each package used for the transportation of hazardous materials be ''designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to transportation . . . there will be no identifiable (without the use of instruments) release of hazardous materials to the environment [and] . . . the effectiveness of the package will not be substantially reduced.'' Under this requirement, offerors must consider how the properties of the material (which can vary depending on temperature and pressure) will affect the packaging.

The DOT Specification 111 tank car is one of several cars authorized by the HMR for the rail transportation of many hazardous materials, including ethanol, crude oil and other flammable liquids. For summary of the design requirements of the DOT Specification 111 tank car see table 2 in the executive summary. Provided in table 8 below, are estimates of the types of tank car tanks and corresponding services.

TABLE 8—ESTIMATES FOR CURRENT FLEET OF RAIL TANK CARS [25]

Tank car category	Population
Total # of Tank Cars	334,869
Total # of DOT 111	272,119
Total # of DOT 111 in Flammable Liquid Service	80,500
Total # of CPC 1232 in Flammable Liquid Service	17,300
Total # of Tank Cars hauling Crude Oil	42,550
Total # of Tank Cars Hauling Ethanol	29,780
CPC 1232 (Jacketed) in Crude Oil Service	4,850
CPC 1232 (Jacketed) in Ethanol Service	0
CPC 1232 (Non-Jacketed) in Crude Oil Service	9,400
CPC 1232 (Non-Jacketed) in Ethanol Service	480
DOT 111 (Jacketed) in Crude Oil Service	5,500
DOT 111 (Jacketed) in Ethanol Service	100
DOT 111 (Non-Jacketed) in Crude Oil Service	22,800
DOT 111 (Non-Jacketed) in Ethanol Service	29,200

Rising demand for rail carriage of crude oil [26] and ethanol [27] increases the risk of train accidents involving those materials. Major train accidents often result in the release of hazardous materials. These events pose a significant danger to the public and the environment. FRA closely monitors train accidents involving hazardous materials and documents the damage sustained by all cars involved in the accident.

In published findings from the June 19, 2009, incident in Cherry Valley,

[24] Additional information on tank car specifications is available at the following URL: *http://www.bnsfhazmat.com/refdocs/1326686674.pdf.*

[25] Source: RSI presentation at the NTSB rail safety forum April 22, 2014, update provided on June 18, 2014.

[26] In 2013 there were approximately 400,000 originations of tank car loads of crude oil. In 2012, there were nearly 234,000 originations. In 2011 there were nearly 66,000 originations. In 2008 there were just 9,500 originations. Association of American Railroads, *Moving Crude Petroleum by Rail, http://dot111.info/wp-content/uploads/2014/01/Crude-oil-by-rail.pdf* (December 2013).

[27] In 2011 there were nearly 341,000 originations of tank car loads of ethanol, up from 325,000 in 2010. In 2000 there were just 40,000 originations. Association of American Railroads, *Railroads and Ethanol, https://www.aar.org/keyissues/Documents/Background-Papers/Railroads%20and%20Ethanol.pdf.* (April 2013).

Illinois, the NTSB indicated that the DOT Specification 111 tank car can almost always be expected to breach in the event of a train accident resulting in car-to-car impacts or pileups.[28] In addition, PHMSA received numerous petitions encouraging rulemaking and both FRA and PHMSA received letters from members of Congress in both parties urging prompt, responsive actions from the Department. The Association of American Railroads (AAR) created the T87.6 Task Force to consider several enhancements to the DOT Specification 111 tank car design and rail carrier operations to enhance rail transportation safety. Simultaneously, FRA conducted research on long-standing safety concerns regarding the survivability of the DOT Specification 111 tank cars designed to current HMR standards and used for the transportation of ethanol and crude oil, focusing on issues such as puncture resistance and top fittings protection. The research indicated that special consideration is necessary for the transportation of ethanol and crude oil in DOT Specification 111 tank cars, especially in HHFTs.

In addition, PHMSA and FRA reviewed the regulatory history pertaining to flammable liquids transported in tank cars. Prior to 1990, the distinction between authorized packaging, for flammable liquids in particular, was described in far more detail in § 173.119. Section 173.119 indicated that the packaging requirements for flammable liquids are based on a combination of flash point, boiling point, and vapor pressure. The regulations provided a point at which a flammable liquid had to be transported in a tank car suitable for compressed gases, commonly referred to as a ''pressure car'' (e.g., DOT Specifications 105, 112, 114 tank cars).

On December 21, 1990, the Research and Special Programs Administration (RSPA), PHMSA's predecessor agency, published a final rule (Docket HM–181; 55 FR 52402), that comprehensively revised the HMR with regard to hazard communication, classification, and packaging requirements based on the United Nations (UN) Recommendations on the Transport of Dangerous Goods (UN Recommendations). Under Docket HM–181, RSPA aimed to simplify and streamline the HMR by aligning with international standards and implementing performance-oriented packaging standards. As previously stated, § 173.119 specified that the packaging requirements for flammable liquids are based on a combination of flash point, boiling point, and vapor pressure. Section 173.119(f) specified that flammable liquids with a vapor pressure more than 27 pounds per square inch absolute (psia) but less than 40 psia at 100 °F (at 40 psia, the material met the definition of a compressed gas), were only authorized for transportation in certain pressure cars. The older regulations recognized that flammable liquids exhibiting high vapor pressures, such as those liquids with dissolved gases, posed significant risks and required a more robust packaging.

The packaging authorizations are currently indicated in the HMT and part 173, subpart F. DOT Specification 111 tank cars are authorized for low, medium and high-hazard liquids and solids (equivalent to Packing Groups III, II, I, respectively). Packing groups are designed to assign a degree of danger presented within a particular hazard class. Packing Group I poses the highest danger (''great danger'') and Packing Group III the lowest (''minor danger'').[29] In addition, the general packaging requirements prescribed in § 173.24 provide additional consideration for selecting the most appropriate packaging from the list of authorized packaging identified in column (8) of the HMT.

In 2011, the AAR issued Casualty Prevention Circular (CPC) 1232, which outlines industry requirements for certain DOT Specification 111 tanks ordered after October 1, 2011, intended for use in ethanol and crude oil service (construction approved by FRA on January 25, 2011—see the Background below for information regarding a detailed description of PHMSA and FRA actions to allow construction under CPC–1232). Key tank car requirements contained in CPC–1232 include the following:

- PG I and II material tank cars to be constructed to AAR Standard 286; AAR Manual of Standards and Recommended Practices, Section C, Car Construction Fundamentals and Details, Standard S–286, Free/Unrestricted Interchange for 286,000 lb. Gross Rail Load (GRL) Cars (AAR Standard 286);
- Head and shell thickness must be ½ inch for TC–128B non jacketed cars and 7/16 inch for jacketed cars;
- Shells of non-jacketed tank cars constructed of A5l6–70 must be 9/16 inch thick;
- Shells of jacketed tank cars constructed of A5l6–70 must be ½ inch thick;
- New cars must be equipped with at least ½ inch half-head shields;
- Heads and the shells must be constructed of normalized steel;
- Top fittings must be protected by a protective structure as tall as the tallest fitting; and
- A reclosing pressure relief valve must be installed.

The CPC–1232 requirements are intended to improve the crashworthiness of the tank cars and include a thicker shell, head protection, top fittings protection, and relief valves with a greater flow capacity.

C. Track Integrity and the Safety of Freight Railroad Operations

Train accidents are often the culmination of a sequence of events that are influenced by a variety of factors and conditions. Broken rails or welds, track geometry, and human factors such as improper use of switches are leading causes of derailments. For example, one study found that broken rails or welds resulted in approximately 670 derailments between 2001 and 2010, which far exceed the average of 89 derailments for all other causes.[30] Rail defects have caused major accidents involving HHFTs, including accidents New Brighton, PA and Arcadia, OH.

PHMSA and FRA have a shared responsibility for regulating the transportation of hazardous materials by rail and take a system-wide, comprehensive approach to the risks posed by the bulk transport of hazardous materials by rail. This approach includes both preventative and mitigating measures. In this rulemaking PHMSA is proposing amendments to directly address the safe transportation of HHFTs. The focus of this NPRM is on mitigating the damages of train accidents, but the speed restriction, braking system and routing provisions could also prevent train accidents. This NPRM does not directly address regulations governing the inspection and maintenance of track. PHMSA and FRA find that existing regulations and on-going rulemaking efforts—together with this NPRM's proposals for speed, braking, and routing—sufficiently address safety issues involving rail defects and human

[28] National Transportation Safety Board, *Railroad Accident Report—Derailment of CN Freight Train U70691–18 With Subsequent Hazardous Materials Release and Fire, http://www.ntsb.gov/doclib/reports/2012/RAR1201.pdf* (February 2012).

[29] Packing groups, in addition in indicating risk of the material, can trigger levels of varying requirements. For example packing groups can indicate differing levels of testing requirements for a non-bulk packaging such or the need for additional operational requirements such as security planning requirements.

[30] See ''Analysis of Causes of Major Train Derailment and Their Effect on Accident Rates'' *http://ict.illinois.edu/railroad/CEE/pdf/Journal%20Papers/2012/Liu%20et%20al%202012.pdf.*

factors. Specifically, the expansion of routing analysis to include HHFTs would require consideration of the 27 safety and security factors (See table 10). These factors include track type, class, and maintenance schedule (which would address rail defects) as well as training and skill level of crews (which would address human factors).

Pursuant to its statutory authority, FRA promulgates railroad safety regulations (49 CFR subtitle B, chapter II (parts 200–299)) and orders, enforces those regulations and orders as well as the HMR and the Federal railroad safety laws, and conducts a comprehensive railroad safety program. FRA's regulations promulgated for the safety of railroad operations involving the movement of freight address: (1) Railroad track; (2) signal and train control systems; (3) operating practices; (4) railroad communications; (5) rolling stock; (6) rear-end marking devices; (7) safety glazing; (8) railroad accident/incident reporting; (9) locational requirements for the dispatch of U.S. rail operations; (10) safety integration plans governing railroad consolidations, mergers, and acquisitions of control; (11) alcohol and drug testing; (12) locomotive engineer and conductor certification; (13) workplace safety; (14) highway-rail grade crossing safety; and other subjects.

The FRA has many initiatives underway to address freight rail safety. Key regulatory actions are outlined below:

• *Risk Reduction Program* (2130–AC11)–FRA is developing an NPRM that will consider appropriate contents for Risk Reduction Programs by Class I freight railroads and how they should be implemented and reviewed by FRA. A Risk Reduction Program is a structured program with proactive processes and procedures developed and implemented by a railroad to identify hazards and to mitigate, if not eliminate, the risks associated with those hazards on its system. A Risk Reduction Program encourages a railroad and its employees to work together to proactively identify hazards and to jointly determine what action to take to mitigate or eliminate the associated risks. The ANPRM was published on December 8, 2010, and the comment period ended on February 7, 2011.

• *Track Safety Standards: Improving Rail Integrity* (2130–AC28)—FRA published this rule on January 24, 2014 (79 FR 4234). FRA's final rule prescribes specific requirements for effective rail inspection frequencies, rail flaw remedial actions, minimum operator qualifications, and requirements for rail inspection records. The bulk of this regulation codified the industry's current good practices. In addition, it removes the regulatory requirements concerning joint bar fracture reporting. Section 403(c) of the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432, 122 Stat. 4848 (October 16, 2008)) (49 U.S.C. 20142 note)) mandated that FRA review its existing regulations to determine if regulatory amendments should be developed that would revise, for example, rail inspection frequencies and methods and rail defect remedial actions and consider rail inspection processes and technologies. The final rule became effective on March 25, 2014. PHMSA and FRA seek public comment on the extent to which additional changes to track integrity regulations are justified for HHFT routes. When commenting, please include a specific proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

• *Positive Train Control (PTC) (multiple rulemakings)*—PTC is a processor-based/communication-based train control system designed to prevent train accidents. The RSIA mandates that PTC be implemented across a significant portion of the Nation's rail system by December 31, 2015. See 49 U.S.C. 20157. PTC may be voluntarily developed and implemented by a railroad following the requirements of 49 CFR part 236, Subpart H, Standards for Processor-Based Signal and Train Control Systems; or, may be, as mandated by the RSIA, developed and implemented by a railroad following the requirements of 49 CFR part 236, Subpart I, Positive Train Control Systems. With limited exceptions and exclusions, PTC is required to be installed and implemented on Class I railroad main lines (i.e., lines with over 5 million gross tons annually) over which any poisonous- or toxic-by-inhalation (PIH/TIH) hazardous materials are transported; and, on any railroad's main lines over which regularly scheduled passenger intercity or commuter operations are conducted. It is currently estimated this will equate to approximately 70,000 miles of track and will involve approximately 20,000 locomotives. PTC technology is capable of automatically controlling train speeds and movements should a train operator fail to take appropriate action for the conditions at hand. For example, PTC can force a train to a stop before it passes a signal displaying a stop indication, or before diverging on a switch improperly lined, thereby averting a potential collision. PTC systems required to comply with the requirements of Subpart I must reliably and functionally prevent:

• Train-to-train collisions;

• Overspeed derailments;

• Incursion into an established work zone; and

• Movement through a main line switch in the improper position.

D. Oil Spill Response Plans

PHMSA's regulations (49 CFR part 130) prescribe prevention, containment and response planning requirements of the Department of Transportation applicable to transportation of oil [31] by motor vehicles and rolling stock. The purpose of a response plan is to ensure that personnel are trained and available and equipment is in place to respond to an oil spill, and that procedures are established before a spill occurs, so that required notifications and appropriate response actions will follow quickly when there is a spill. We believe that most, if not all, of the rail community transporting oil, including crude oil transported as a hazardous material, is subject to the basic response plan requirement of 49 CFR 130.31(a) based on the understanding that most, if not all, rail tank cars being used to transport crude oil have a capacity greater than 3,500 gallons. However, a comprehensive response plan for shipment of oil is only required when the oil is in a quantity greater than 42,000 gallons per package. Tank cars of this size are not used to transport oil. As a result, the railroads do not file a comprehensive oil response plan. A comparison of a basic and comprehensive plan can be seen below in Table 9. The shaded rows of the table indicate requirements that are not part of the basic plan but would be included in the comprehensive plan.

[31] For purposes of 49 CFR part 130, *oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with the wastes other than dredged spoil. 49 CFR 130.5. This includes non-petroleum oil such as animal fat, vegetable oil, or other non-petroleum oil.

TABLE 9—COMPARISON OF BASIC AND COMPREHENSIVE SPILL PLANS BY REQUIREMENT

Category	Requirement	Type of plan	
		Basic	Comprehensive
Preparation	Sets forth the manner of response to a discharge.	Yes	Yes.
Preparation	Accounts for the maximum potential discharge of the packaging.	Yes	Yes.
Personnel/Equipment	Identifies private personnel and equipment available for response.	Yes	Yes.
Personnel/Coordination	Identifies appropriate persons and agencies (including telephone numbers) to be contacted, including the NRC.	Yes	Yes.
Documentation	Is kept on file at the principal place of business and at the dispatcher's office.	Yes	Yes.
Coordination	Reflects the requirements of the National Contingency Plan (40 CFR Part 300) and Area Contingency Plans.	No	Yes.
Personnel/Coordination	Identified the qualified individual with full authority to implement removal actions, and requires immediate communications between the individual and the appropriate Federal official and the persons providing spill response personnel and equipment.	No	Yes.
Personnel/Equipment/Coordination	Identifies and ensures by contract or other means the availability of private personnel, and the equipment necessary to remove, to the maximum extent practicable, a worst-case discharge (including that resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge.	No	Yes.
Training	Describes the training, equipment, testing, periodic unannounced drills, and response actions of personnel, to be carried out under the plan to ensure safety and to mitigate or prevent discharge or the substantial threat of such a discharge.	No	Yes.
Documentation	Is submitted (and resubmitted in the event of a significant change), to the Administrator of FRA.	No	Yes.

E. Rail Routing

For some time, there has been considerable public and Congressional interest in the safe and secure rail routing of security-sensitive hazardous materials (such as chlorine and anhydrous ammonia). The Implementing Recommendations of the 9/11 Commission Act of 2007 directed the Secretary, in consultation with the Secretary of Homeland Security, to publish a rule governing the rail routing of security-sensitive hazardous materials. On December 21, 2006, PHMSA, in coordination with FRA and the Transportation Security Administration (TSA) of the U.S. Department of Homeland Security (DHS), published an NPRM under Docket HM–232E (71 FR 76834), which proposed to revise the current requirements in the HMR applicable to the safe and secure transportation of hazardous materials by rail. Specifically, we proposed to require rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments.

In that NPRM, we solicited comments on whether the proposed requirements should also apply to flammable gases, flammable liquids, or other materials that could be weaponized, as well as hazardous materials that could cause serious environmental damage if released into rivers or lakes. Commenters who addressed this issue indicated that rail shipments of Division 1.1, 1.2, and 1.3 explosives; PIH materials; and highway-route controlled quantities of radioactive materials pose significant rail safety and security risks warranting the enhanced security measures proposed in the NPRM and adopted in a November 26, 2008 final rule (73 FR 20752). Commenters generally did not support enhanced security measures for a broader list of materials than were proposed in the NPRM.

The City of Las Vegas, Nevada, did support expanding the list of materials for which enhanced security measures are required to include flammable liquids; flammable gases; certain oxidizers; certain organic peroxides; and 5,000 pounds or greater of pyrophoric materials. While DOT and DHS agreed that these materials pose certain safety and security risks in rail transportation, the risks were not as great as those posed by the explosive, PIH, and radioactive materials specified in the NPRM, and PHMSA was not persuaded that they warranted the additional safety and security measures. PHMSA did note, however, that DOT, in consultation with DHS, would continue to evaluate the transportation safety and security risks posed by all types of hazardous materials and the effectiveness of our regulations in addressing those risks and would consider revising specific requirements as necessary.

The 2008 final rule requires rail carriers to select a practicable route posing the least overall safety and security risk to transport security-sensitive hazardous materials (73 FR 72182). The final rule implemented regulations requiring rail carriers to compile annual data on certain shipments of explosive, toxic by inhalation, and radioactive materials; use the data to analyze safety and security risks along rail routes where those materials are transported; assess alternative routing options; and make routing decisions based on those assessments. In accordance with § 172.820(e), the carrier must select the route posing the least overall safety and security risk. The carrier must retain in writing all route review and selection decision documentation. Additionally, the rail carrier must identify a point of contact on routing issues involving the movement of covered materials and provide the contact information to the following:

1. State and/or regional Fusion Centers that have been established to coordinate with state, local, and tribal officials on security issues and which are located within the area encompassed by the rail carrier's rail system; [32] and

2. State, local, and tribal officials in jurisdictions that may be affected by a

[32] *http://www.dhs.gov/fusion-center-locations-and-contact-information.*

rail carrier's routing decisions and who have contacted the carrier regarding routing decisions.

Rail carriers must assess available routes using, at a minimum, the 27 factors listed in Appendix D to Part 172 of the HMR to determine the safest, most secure routes for security-sensitive hazardous materials.

TABLE 10—FACTORS TO BE CONSIDERED IN THE PERFORMANCE OF THIS SAFETY AND SECURITY RISK ANALYSIS

Volume of hazardous material transported	Rail traffic density	Trip length for route.
Presence and characteristics of railroad facilities.	Track type, class, and maintenance schedule	Track grade and curvature.
Presence or absence of signals and train control systems along the route (''dark'' versus signaled territory).	Presence or absence of wayside hazard detectors.	Number and types of grade crossings.
Single versus double track territory	Frequency and location of track turnouts	Proximity to iconic targets.
Environmentally sensitive or significant areas	Population density along the route	Venues along the route (stations, events, places of congregation).
Emergency response capability along the route	Areas of high consequence along the route, including high consequence targets.	Presence of passenger traffic along route (shared track).
Speed of train operations	Proximity to en-route storage or repair facilities.	Known threats, including any threat scenarios provided by the DHS or the DOT for carrier use in the development of the route assessment.
Measures in place to address apparent safety and security risks.	Availability of practicable alternative routes	Past accidents.
Overall times in transit	Training and skill level of crews	Impact on rail network traffic and congestion.

These factors address safety and security issues, such as the condition of the track and supporting infrastructure; the presence or absence of signals; past incidents; population density along the route; environmentally-sensitive or significant areas; venues along the route (stations, events, places of congregation); emergency response capability along the route; measures and countermeasures already in place to address apparent safety and security risks; and proximity to iconic targets. The HMR require carriers to make conscientious efforts to develop logical and defendable systems using these factors.

FRA enforces the routing requirements in the HMR and is authorized, after consulting with PHMSA, TSA, and the Surface Transportation Board, to require a railroad to use an alternative route other than the route selected by the railroad if it is determined that the railroad's route selection documentation and underlying analysis are deficient and fail to establish that the route chosen poses the least overall safety and security risk based on the information available (49 CFR 209.501).

On January 23, 2014, in response to its investigation of the Lac-Mégantic accident, the NTSB issued three recommendations to both PHMSA and FRA. Recommendation R–14–4 requested PHMSA work with FRA to expand hazardous materials route planning and selection requirements for railroads to include key trains transporting flammable liquids as defined by the AAR Circular No. OT–55–N and, where technically feasible, require rerouting to avoid transportation of such hazardous materials through populated and other sensitive areas.

III. Recent Actions Addressing HHFT Risk

PHMSA and FRA have used a variety of regulatory and non-regulatory methods to address the risks of the bulk transport of flammable liquids, including crude oil and ethanol, by rail in HHFTs. These efforts include issuing guidance, conducting rulemakings, participating in rail safety committees, holding public meetings with the regulated community, enhancing enforcement efforts, and reaching out to the public. All of these efforts are consistent with our system-wide approach. We are confident these actions provide valuable information and guidance to the regulated community and enhance public safety. In the following, we discuss in detail these efforts and the NTSB recommendations related to HHFTs.

A. Regulatory Actions

On May 14, 2010, PHMSA published a final rule under Docket HM–233A (75 FR 27205) that amended the HMR by incorporating provisions contained in certain widely used or longstanding special permits having an established safety record. As part of this rulemaking, PHMSA authorized certain rail tank cars, transporting hazardous materials, to exceed the gross weight on rail limitation of 263,000 pounds (263,000 lb. GRL) upon approval of FRA.

On January 25, 2011, FRA published a **Federal Register** notice of FRA's approval (76 FR 4250) pursuant to PHMSA's May 14, 2010 final rule. The notice established detailed conditions for the manufacturing and operation of certain tank cars in hazardous materials service, including the DOT–111, that weigh between 263,000 and 286,000 pounds. Taken as a whole, the PHMSA rulemaking and the FRA notice serves as the mechanism for tank car manufacturers to build a 286,000-pound tank car. As such, rail car manufacturers currently have the authority to manufacture the enhanced DOT Specification 111 tank car (e.g., CPC–1232 tank car outlined in ''II. Overview of Current Regulations Relevant to this Proposal'') under the conditions outlined, in the January 25, 2011 notice.

The notice grants a blanket approval for tank cars to carry up to 286,000 lb. GRL, when carrying non-PIH materials, subject to certain requirements. FRA divided these additional requirements into the following three categories:

1. Existing tank cars that were authorized under a PHMSA special permit for greater than 263,000 lb. GRL, FRA's approval requires the following:

a. Compliance with various terms of the existing special permits;

b. Tank cars constructed, rebuilt, or modified to meet AAR Standard S–259 [33] must be operated only in controlled interchange;

c. Tank cars constructed, rebuilt, or modified to meet AAR Standard S–286 may operate in unrestricted interchange; and

d. Tank car owners must determine which standard applies, ensure tank

[33] Both S–259 and S–286 are mechanical (underframes, trucks, wheels, axles, brake system, draft system, a car body fatigue) design requirements for operation of tank cars at a gross rail load of 286,000 pounds. S–259 preceded S–286.

cars are marked appropriately, and maintain and file associated records.

2. Tank cars that have been built, rebuilt, or otherwise modified pursuant to AAR Standards S–259 or S–286 for greater than 263,000 pounds gross weight on rail, but are not authorized under a PHMSA special permit, FRA's approval requires the following:

a. Tank cars constructed, rebuilt, or modified to meet AAR Standard S–259 must be operated only in controlled interchange;

b. Tank cars constructed, rebuilt, or modified to meet AAR Standard S–286 may operate in unrestricted interchange;

c. Tank cars must satisfy design specifications listed in the notice, including materials of construction, thickness, and jacketing; and

d. Tank car owners must determine which standard and additional specification requirements apply, ensure tank cars are marked appropriately, and maintain and file associated records.

3. New tank cars, manufactured after the notice was published, to carry more than 263,000 pounds gross weight on rail, FRA's approval requires the following:

a. Tank cars must be constructed in accordance with AAR Standard S–286; and

b. Tank cars must satisfy design specifications listed in the notice, including puncture resistance and service equipment.

Any manufacturer choosing to design a car that does not meet the conditions of FRA's 2011 approval must request a new approval from FRA in accordance with § 179.13 of the HMR.

Following the publication of the PHMSA rule and the subsequent FRA approval notice, PHMSA received a petition for rulemaking (P–1577) from the AAR on March 9, 2011, requesting changes to PHMSA's specifications for tank cars (namely the DOT Specification 111 tank car) used to transport PG I and II materials. DOT recognized the improvements of the P–1577 tank car relative to the DOT Specification 111 tank car, but challenged the industry to consider additional improvements in puncture resistance, thermal protection, top fitting protection, bottom outlet protection, and braking, as well as railroad operations. As a result, the AAR Tank Car Committee (TCC) constituted the T87.6 Task Force. The task force was charged with (1) reevaluating the standards in P–1577 and considering additional design enhancements for tank cars used to transport crude oil, ethanol and ethanol/gasoline mixtures as well as (2) considering operating requirements to reduce the risk of train accidents involving tank cars carrying crude oil classified as PG I and II, and ethanol.

FRA chaired this task force and expected the activity would lead to a more comprehensive approach than requested by P–1577. The task force promised to address the root cause, severity, and consequences of train accidents, and its recommendations were finalized on March 1, 2012. The T87.6 Task Force recommended requirements for a pressure relief device with a start of discharge setting of 75 psig, and a minimum flow capacity of 27,000 SCFM.

The task force did not address many of the recommendations provided by FRA, including the following:

Tank car design and use:

- Thermal protection to address breaches attributable to exposure to fire conditions;
- Roll-over protection to prevent damage to top and bottom fittings and limit stresses transferred from the protection device to the tank shell;
- Hinged and bolted manways to address a common cause of leakage during accidents and Non-Accident Releases (NARs);
- Bottom outlet valve elimination; and
- Increasing outage from 1 percent to 2 percent to improve puncture resistance.

Rail Carrier Operations:

- Rail integrity (e.g., broken rails or welds, misaligned track, obstructions, track geometry, etc.) to reduce the number and severity of train accidents;
- Alternative brake signal propagation systems ECP, DP, and two-way EOT device to reduce the number of cars and energy associated with train accidents;
- Speed restrictions for key trains containing 20 or more loaded tank cars (on August 5, 2013, AAR issued Circular No. OT–55–N addressing this issue); and
- Emergency response to mitigate the risks faced by response and salvage personnel, the impact on the environment, and delays to traffic on the line.

After considering the disparity between the various stakeholders and the lack of actionable items by the task force, PHMSA and FRA initiated the development of an ANPRM to consider revisions to the HMR by improving the crashworthiness of railroad tank cars and improve operations. The ANPRM would respond to petitions for rulemaking submitted by industry and safety recommendations issued by the NTSB. Between April 2012 and October 2012, PHMSA received an additional three petitions (P–1587, P–1595 and P–1612) and one modification of a petition (P–1612) on rail safety issues. The additional petitions were submitted by concerned communities and various industry associations requesting further modification to the tank car standards.

On September 6, 2013, PHMSA published the ANPRM (78 FR 54849) seeking public comments on whether issues raised in eight petitions [34] and four NTSB Safety Recommendations would enhance safety, revise, and clarify the HMR with regard to rail transport. Specifically, we requested comments on important amendments that would do the following: (1) Enhance the standards for DOT Specification 111 tank cars used to transport PG I and II flammable liquids; (2) explore the feasibility of additional operational requirements to enhance the safe transportation of Packing Group I and II flammable liquids; (3) afford FRA greater discretion to authorize the movement of non-conforming tank cars; (4) correct regulations that allow an unsafe condition associated with pressure relief valves (PRV) on rail cars transporting carbon dioxide, refrigerated liquid; (5) revise outdated regulations applicable to the repair and maintenance of DOT Specification 110, DOT Specification 106, and ICC 27 tank car tanks (ton tanks); and (6) except rupture discs from removal if the inspection itself would damage, change, or alter the intended operation of the device.

On November 5, 2013, PHMSA published a 30-day extension of the comment period for the ANPRM (78 FR 66326). We received a request to extend the comment period to 90 days from the Sierra Club on behalf of Climate Parents, Columbia Riverkeeper, ForestEthics, Friends of Earth, Natural Resources Defense Council, Oil Change International, San Francisco Baykeeper, Spokane Riverkeeper, Washington Environmental Council, and the Waterkeeper Alliance. The request indicated that the primary basis for extension was to allow the public a meaningful review of these proposed changes in rail safety requirements, especially regarding tank cars transporting crude oil and tar sands, while highlighting several recent tank car train accidents. The request also indicated that the government shutdown in October 2013 prevented communication with DOT staff for review of the technical proposals during

[34] In addition to the four tank car related petitions, PHMSA also received four additional petitions relating to rail operational requirements which were contained in the September 2013 ANPRM.

the initial 60-day comment period. Although PHMSA normally considers an initial 60-day comment period sufficient time to review and respond to rulemaking proposals, due to PHMSA's desire to collect meaningful input from a number of potentially affected stakeholders, PHMSA extended the comment period by 30 days.

Comments submitted in response to the ANPRM indicate that public interest in the issues raised by the ANPRM is significant. PHMSA received over 100 individual submissions of comments, including the signatures of over 152,000 stakeholders, expressing views regarding tank car and operational standards for flammable liquids. The comments were from local communities, cities, and towns; rail carriers; offerors; suppliers of equipment; tank car manufacturers; environmental groups; NTSB; and the U.S. Congress. PHMSA reviewed the public comments and used the information gathered to aid in the development of this proposed rule.

B. Emergency Orders and Non-Regulatory Actions

In addition to the rulemaking activity described above, FRA took action, in the form of an emergency order, following the Lac-Mégantic derailment. On August 7, 2013, FRA published EO 28 (78 FR 48218) to address safety issues related to securement of certain hazardous materials trains; specifically, trains with—

(1) Five or more tank carloads of any one or any combination of materials poisonous by inhalation as defined in Title 49 CFR 171.8, and including anhydrous ammonia (UN1005) and ammonia solutions (UN3318); or

(2) 20 rail carloads or intermodal portable tank loads of any one or any combination of materials listed in (1) above, or, any Division 2.1 flammable gas, Class 3 flammable liquid or combustible liquid, Class 1.1 or 1.2 explosive,[35] or hazardous substance listed in 49 CFR 173.31(f)(2).

EO 28 prohibits railroads from leaving trains or vehicles transporting the specified quantities of the specified types of hazardous materials unattended on mainline track or siding outside of a yard or terminal unless the railroad adopts and complies with a plan that provides sufficient justification for leaving them unattended under specific circumstances and locations. The order also requires railroads to develop specific processes for securing, communicating, and documenting the securement of unattended trains and vehicles subject to the Order, including locking the controlling locomotive cab door or removing the reverser and setting a sufficient number of hand brakes before leaving the equipment unattended. In addition, the order requires railroads to review, verify, and adjust as necessary existing requirements and instructions related to the number of hand brakes to be set on unattended trains; conduct train securement job briefings among crewmembers and employees; and develop procedures to ensure qualified employees inspect equipment for proper securement after emergency response actions that involve the equipment.

The quantities of specific hazardous materials addressed in EO 28 were further addressed under the AAR Circular No. OT–55–N, Recommended Railroad Operating Practices for Transportation of Hazardous Materials, effective August 5, 2013.[36] AAR Circular No. OT–55–N supersedes AAR Circular No. OT–55–M, issued October 1, 2012. In OT–55–N, AAR revised the definition of ''key train'' in two specific areas.

(1) The definition of ''key train'' was revised from ''five tank carloads of Poison or Toxic Inhalation Hazard (PIH or TIH) (Hazard Zone A, B, C, or D), anhydrous ammonia (UN1005), or ammonia solutions (UN3318)'' to one tank carload.

(2) The ''key train'' definition was amended by adding ''20 carloads or portable tank loads of any combination of hazardous material.''

Any train that meets the ''key train'' definition is limited to a 50-mph speed restriction under AAR Circular No. OT–55–N. In addition, any route defined by a railroad as a key route shall meet certain standards described in OT–55–N, including the following:

- Wayside defective wheel bearing detectors at a maximum of 40 miles apart, or an equivalent level of protection;
- Main track on key routes should be inspected by rail defect detection and track geometry inspection cars or by any equivalent level of inspection at least twice each year;
- Sidings on key routes should be inspected at least once a year, and main track and sidings should have periodic track inspections to identify cracks or breaks in joint bars; and
- Track used for meeting and passing key trains should be FRA Class 2 track or higher.

As previously discussed, EO 28 prohibits railroads from leaving trains or vehicles transporting the specified hazardous materials unattended on mainline track or siding outside of a yard or terminal unless the railroad adopts and complies with a plan that provides sufficient justification for leaving them unattended under specific circumstances and locations.

EO 28 was supplemented with a PHMSA and FRA joint safety advisory published the same day (78 FR 48224). The joint safety advisory addressed causes of the Lac-Mégantic derailment, provided DOT safety and security recommendations, and announced PHMSA and FRA participation in an Emergency RSAC meeting to address rail safety concerns.

On August 27–28, 2013, PHMSA and FRA held a public meeting to review the requirements in the HMR applicable to rail operations (78 FR 42998). PHMSA and FRA conducted this meeting as part of a comprehensive review of operational factors that impact the safety of the transportation of hazardous materials by rail. This meeting provided the opportunity for public input on a wide range of rail safety requirements including operational rail requirements. PHMSA and FRA reviewed the transcript and public comments, all of which support a comprehensive review of these requirements. Additional information gathered from the public meeting, particularly regarding the modernization of Part 174 of the HMR, will be addressed in a future rulemaking.

On August 29, 2013, FRA convened an emergency meeting to initiate a series of RSAC working groups to discuss and work through specific tasks resulting from the Lac-Mégantic derailment. RSAC members discussed the formulation of task statements regarding appropriate train crew size, hazard classes, and quantities of hazardous materials that should trigger additional operating procedures, including attendance and securement requirements. On April 9, 2014 RSAC approved by a majority vote the Hazardous Materials Working Group's consensus recommendations.[37] Table 11 provides the RSAC recommendations.

[35] Should have read ''Division'' instead of ''Class.''

[36] The document is available in the public docket for this proceeding and at the following URL: *http://www.aar.com/CPC-1258%20OT-55-N%208-5-13.pdf.*

[37] *https://rsac.fra.dot.gov/meetings/Railroad%20Safety%20Advisory%20Committee%20Hazardous%20Materials%20Issues%20Recommendation%20VOTE.pdf.*

TABLE 11—RSAC CONSENSUS RECOMMENDATIONS FROM THE HAZARDOUS MATERIALS ISSUES WORKING GROUP

Subject	Recommendation
Definition of residue	Propose to amend the definition of Residue as follows: *Residue* means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors. The extent practicable means an unloading facility has unloaded a bulk package using properly functioning service equipment and plant process equipment.
Guidance document language for securement of tank cars on private track.	Proposed wording for a recommended practice document. Securement and security of loaded hazardous materials cars on private track: *''It has come to FRA's attention that cuts of loaded hazardous materials cars are being stored on track that is exclusively leased, and meets the definition of private track, but that may not be adjacent to a shipper or consignee facility. These stored cars are of great concern to the general public living in nearby communities. The cars are being stored in other locations simply for available space reasons—there isn't available storage space closer to a consignee facility. If the cars are stored on track that meets the definition of ''private track'' they are considered to be no longer in transportation, and the hazardous materials regulations do not apply. Nonetheless, FRA strongly recommends the following as best practices that may enhance the safety and security of stored hazardous materials cars.''* *''FRA recommends that companies (party in control of private track as defined in § 171.8) review the private track locations where cuts of hazardous materials cars (20 or more cars) are regularly stored to determine the following:* 1. *Whether additional attendance, monitoring, or other security measures may be appropriate;* 2. *Whether an adequate and appropriate number of handbrakes are set on the cuts of cars that will ensure that there is no unintended movement of the cars;* 3. *Whether all of the hazard communication information (placards, emergency response information) be maintained as they would if the cars were in transportation, and that this information may be available to emergency responders if requested.''*
PHMSA re-engage their regulatory authority over certain aspects of loading, unloading and storage of tank cars containing hazardous materials.	*In 2003, the Research and Special Programs Administration (RSPA), the predecessor agency to PHMSA, clarified its regulatory jurisdiction over the loading, unloading, and storage of hazardous materials. 68 Fed. Reg. 61906 (October 30, 2003). The intent was to clarify where transportation began and ended, and thus, where PHMSA jurisdiction began and ended. In the rail mode, certain aspects of the storage, loading, and unloading of hazardous materials to and from rail tank cars were no longer regulated, and those requirements were removed from the CFR. The thought was that the loading, unloading, and storage were more appropriately workplace issues better addressed by an agency such as OSHA. PHMSA continued to regulate certain ''pre-transportation functions'' that it believed were clearly tied to transportation safety, such as the securement of closures on rail tank cars after loading but before offering the package to a carrier. This proposal is not intended to change the current regulation of OSHA over workplace safety issues related to loading, unloading, and storage of railroad tank cars.* *As certain industries that ship hazardous materials by rail have evolved, and as some loading, unloading, storage, and transportation practices have changed, DOT believes it may be appropriate to re-engage on these subjects. DOT believes that there may be aspects of these procedures that directly affect transportation safety, and that it would be appropriate for to regulate them.*
Align definition of Appendix A train with ''Key Train'' from OT–55–N.	Appendix A to Emergency Order 28 Any train transporting: 1. One or more tank car loads of materials poisonous by inhalation as defined in 49 CFR 171.8, and including anhydrous ammonia (UN 1005) and ammonia solutions (UN 3318); or 2. 20 or more rail car loads or intermodal portable tank loads of any material listed in (1) above, or bulk car loads Division 2.1 flammable gases, Class 3 flammable liquids, or hazardous substances listed in 49 CFR 173.31(f)(2); or rail car loads of packages of Division 1.1 or 1.2 explosives.

PHMSA solicits information and comment on any alternate approaches that may be contained in or considered as part of any recommendation from the RSAC to FRA regarding the proposals in this NPRM.

FRA and PHMSA are active participants and observers of the AAR Tank Car Committee. This committee is comprised of the AAR, railroads, tank car owners, manufacturers, and shippers, with active participation from U.S. and Canadian regulators. The AAR Tank Car Committee works together to develop technical standards for how tank cars, including those used to transport hazardous materials, are designed and constructed. PHMSA also participates as a working member in API's Classification and Loading of Crude Oil Standard Development Working Group.

On November 20, 2013, PHMSA and FRA issued a follow-up Joint Safety Advisory to reinforce the importance of proper characterization, classification, and selection of a packing group for Class 3 (flammable liquid) materials, and the corresponding regulations for safety and security planning. The Advisory reinforced the Department's position that we expect rail offerors and rail carriers to revise their safety and security plans required by the HMR, including the required risk assessments, to address the safety and security issues identified in FRA's Emergency Order No. 28 and the August 7, 2013, joint Safety Advisory (78 FR 69745). The Advisory was supplemented with enhanced enforcement operations by FRA to ensure compliance with the applicable requirements.

On January 2, 2014, PHMSA issued a Safety Alert warning of crude oil variability and emphasized proper and sufficient testing to ensure accurate characterization and classification of this hazardous material. Proper characterization and classification of a hazardous material are integral for the HMR to accomplish its safety purpose. Characterization and classification ultimately determine the appropriate and permitted packagings for a given hazardous material. This alert addressed the initial findings of *Operation Classification,* a compliance initiative involving unannounced inspections and testing of crude oil samples to verify

that offerors of the materials have properly classified and described the hazardous materials. The alert expressed PHMSA's concern that unprocessed crude oil may affect the integrity of the packaging or present additional hazards, related to corrosivity, sulfur content, and dissolved gas content. It also noted that preliminary testing, focused on the classification and packing group assignments that have been selected and certified by offerors of crude oil and PHMSA, had found it necessary to expand the scope of their sampling and analyses to measure other factors that would affect the proper characterization and classification of the materials.

PHMSA and FRA launched *Operation Classification* in August 2013 to verify that crude oil is being properly classified in accordance with Federal regulations. Activities included unannounced inspections, data collection and sampling at strategic terminal and loading locations for crude oil. PHMSA investigators tested samples from various points along the crude oil transportation chain; from cargo tanks that deliver crude oil to rail loading facilities, from storage tanks at the facilities, and from pipelines connecting storage tanks to rail cars that would move the crude across the country. On February 4, 2014, PHMSA announced the first results from *Operation Classification,* which indicated that some crude oil taken from cargo tanks en route to rail loading facilities was not properly classified. Based on some of the test results, 11 of the 18 samples taken from cargo tanks delivering crude oil to the rail loading facilities were assigned to packing groups that incorrectly indicated a lower risk than what was actually being transported. PHMSA issued three Notices of Probable Violations to the companies involved as a result, proposing civil penalties totaling $93,000. *Operation Classification* is part of a larger Department-wide effort named *Operation Safe Delivery. Operation Safe Delivery* is an effort to ensure the safe transportation of crude oil moving by rail using a comprehensive approach, including prevention, mitigation and response.

On January 9, 2014, the Secretary issued a ''Call to Action,'' to actively engage all the stakeholders in the crude oil industry, including CEOs of member companies of the American Petroleum Institute and CEOs of the railroads. In a meeting held on January 16, 2014, the Secretary and the Administrators of PHMSA and FRA requested that offerors and carriers identify prevention and mitigation strategies that can be implemented quickly.

Specifically, the Call to Action discussed issues including proper classification and characterization of hazardous materials, operational controls and track maintenance that could prevent accidents, and tank car integrity improvements that could mitigate the effect of accidents should one occur. The meeting was an open and constructive dialogue on how, collaboratively, industry and government can make America's railways safer.

As a result of this meeting, the rail and crude oil industries agreed to voluntarily consider or implement potential improvements including speed restrictions in high consequence areas, alternative routing, the use of distributive power to improve braking, and improvements in emergency response preparedness and training. On January 22, 2014 the Secretary sent a letter to the attendees recapping the meeting and stressing the importance of this issue.[38]

The rail and crude oil industries committed to consider and address several issues and, within 30 days, provide details regarding the specific actions that shippers and carriers will take immediately to improve safety in the transportation of petroleum crude oil. Specifically, the AAR agreed to consider, and provide additional details about, the following:

- The use of existing Federal protocols for routing hazardous materials, such as Toxic-by-Inhalation hazardous materials (TIH), for petroleum crude oil unit train shipments;
- The use of speed restrictions where appropriate on crude oil unit trains traveling through high consequence areas;
- The use of distributed power on unit petroleum crude oil trains; and
- Increasing and improving track, mechanical, and other rail safety inspections.

The API recommended and agreed to consider the following:

- Share expertise and testing information with DOT, notably PHMSA, regarding the characteristics of petroleum crude oil in the Bakken region;
- Work on identifying best practices to ensure that appropriate and comprehensive testing and classification of petroleum crude oil being transported by rail is performed; and
- Collaborate with PHMSA on improving its analysis of petroleum crude oil characteristics.

Both AAR and API agreed to consider the following:

- Improve emergency responder capabilities and training to address petroleum crude oil train accidents; and
- Recommission the AAR's Rail Tank Car Standards Committee to reach consensus on additional changes proposed to the AAR rail tank car standard CPC 1232s, to be considered by DOT, as appropriate, in the rulemaking process.

On January 17, 2014, PHMSA launched a Web page entitled Operation Safe Delivery: Enhancing the Safe Transport of Flammable Liquids.[39] This site describes the Department's efforts to enhance the safe transport of flammable liquids by rail and acts as a valuable resource for shippers and transporters of those materials. The site will be continuously updated to provide progress reports on industry commitments as part of the Call to Action and additional Departmental activities related to the rail safety initiative. The page also displays PHMSA's rail safety action plan. The site has already received considerable traffic, and seems to be an educational resource for the regulated community.

On February 21, 2014, in response to the Secretary's Call to Action:

API committed to the following:

1. To assemble top experts to develop a comprehensive industry standard for testing, characterizing, classifying, and loading and unloading crude oil in rail tank cars. API is moving as quickly as possible with the goal of publishing this standard in six months. Its standards process is open, transparent and accredited by the American National Standards Institute, the same organization that accredits similar programs at several U.S. national laboratories. All stakeholders are invited to participate, including PHMSA.

2. Work with PHMSA, the railroad industry, and emergency responders to enhance emergency response communications and training. API recently joined Transportation Community Awareness and Emergency Response, known as TRANSCAER®, which is a voluntary national outreach effort that assists communities in preparing for and responding to incidents.

API continues to work with PHMSA and other representatives from the Department of Transportation to share information and expertise on crude oil

[38] See Call to Action Follow-up letter *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Letter_from_Secretary_Foxx_Follow_up_to_January_16.pdf.*

[39] *http://www.phmsa.dot.gov/hazmat/osd/calltoaction.*

characteristics. They have also offered to help PHMSA review the data collected through *Operation Classification.*

3. API continues to work with the railroad industry, railcar manufacturers, and other stakeholders to address tank car design. Their industry has been building next generation tank cars since 2011 that exceed federal standards. These new cars make up nearly 40 percent of the crude oil tank car fleet and will be 60 percent by the end of 2015. They are currently engaged in a holistic and data-driven examination to determine whether additional design changes would measurably improve safety without inadvertently shifting risk to other areas.

AAR and its member railroads committed to the following:

1. By no later than July 1, 2014, railroads will apply any protocols developed by the rail industry to comply with the existing route analysis requirements of 49 CFR 172.820(c)–(f) and (i) to the movement of trains transporting 20 or more loaded railroad tank cars containing petroleum crude oil (Key Crude Oil Train).

2. Rail carriers will continue to adhere to a speed restriction of 50 mph for any Key Crude Oil Trains. By no later than July 1, 2014, railroads will adhere to a speed restriction of 40 mph for any Key Crude Oil Train with at least one 'DOT Specification 111' tank car loaded with crude oil or one non-DOT specification tank car loaded with crude oil while that train travels within the limits of any high-threat urban area as defined by 49 CFR 1580.3. For purposes of AAR's commitments, 'DOT Specification 111' tank cars are those cars that meet DOT Specification 111 standards but do not meet the requirements of CPC–1232 or any new standards adopted by DOT after the date of this letter.

3. By April, 2014, railroads will equip all Key Crude Oil Trains, operating on main track with either distributed power locomotives or an operative two-way telemetry end of train device as defined by 49 CFR 232.5.

4. Effective March 25, 2014, railroads will perform at least one additional internal rail inspection than is required by 49 CFR 213.237(c) each calendar year on main line routes it owns or has been assigned responsibility for maintaining under 49 CFR 213.5 over which Key Crude Oil Trains are operated. Railroads will also conduct at least two track geometry inspections each calendar year on main line routes it owns or is responsible for maintaining under 49 CFR 213.5 over which Key Crude Oil Trains are operated.

5. By no later than July 1, 2014, railroads will commence installation and will complete such installations as soon as practicable, of wayside defective bearing detectors at least every 40 miles along main line routes it owns or has been assigned responsibility or maintaining under 49 CFR 213.5 over which Key Crude Oil Trains are operated, unless track configuration or other safety considerations dictate otherwise.

6. AAR and the railroads will create an inventory of emergency response resources along routes over which Key Crude Oil Trains operate for responding to the release of large amounts of petroleum crude oil in the event of an incident. This inventory will include locations for the staging of emergency response equipment and, where appropriate, contacts for the notification of communities. Upon completion of the inventory, the railroads will provide DOT with access to information regarding the inventory and will make relevant information from the inventory available to appropriate emergency responders upon request.

7. Railroads will commit in the aggregate a total of approximately $5 million to develop and provide a hazardous material transportation training curriculum applicable to petroleum crude oil transport for emergency responders and to fund a portion of the cost of this training through the end of 2014. One part of the curriculum will be for local emergency responders in the field; and more comprehensive training will be conducted at the Transportation Technology Center, Inc., (TTCI) training facility in Pueblo, Colorado. AAR will work with emergency responders in developing, by July 1, 2014, the training program that meets the needs of emergency responders.

8. Railroads will continue to work with communities through which Key Crude Oil Trains move to address on a location-specific basis concerns that the communities may raise regarding the transportation of petroleum crude oil through those communities and take such action as the railroads deem appropriate.

The American Short Line and Regional Railroad Association (ASLRRA) offered the following:

1. ASLRRA will recommend to its members that unit trains of crude oil (20 cars or more) operate at a top speed of no more than 25 mph on all routes.

2. ASLRRA will work with its member railroads and the Class I railroads to develop a program of best practices to assure a seamless system of timely and effective emergency response to crude oil spills no matter where on the national rail system an incident may occur.

3. ASLRRA will recommend that its member railroads sign master service agreements with qualified environmental cleanup providers to ensure prompt and effective remediation in all areas subjected to unintentional discharge of crude oil. In addition, ASLRRA will work with the AAR and Class I railroads to eliminate any gaps in coordination or response systems when both large and small railroads are involved.

4. ASLRRA will support and encourage the development of new tank car standards including but not limited to adoption of the 9/16 inch tank car wall that will meet the needs of all stakeholders and enhance the safety of the transportation of crude oil by rail.

5. Contingent upon securing a six to twelve month pilot-project grant from the FRA, the ASLRRA plans to expedite the most significant project in its 100 year history to reduce the risks of accidents, incidents, and regulatory noncompliance in the small railroad industry. If grant funding is provided, ASLRRA will create the Short Line Safety Institute which will:

a. Work jointly with the FRA to develop and implement a pilot safety inspection and evaluation project for short line railroads.

b. Work with the FRA Office of Research and Development Human Factors Division (1) to create an assessment process to evaluate the current safety and compliance attainment levels on small railroads, (2) to contract and train expert qualified inspectors, and (3) to develop training, assessment and reporting document systems.

c. Work with FRA to create benchmarks and objectives to measure the progress and effectiveness of the Short Line Safety Institute safety inspection programs.

d. Begin with a focus on the transportation of crude oil by small railroads and thereafter expand to the transportation of all commodities for Class III railroads.

The Railway Supply Institute Committee on Tank Cars (RSICTC), although not part of the Call to Action plan, committed to the following:

In response to the Secretary's Call to Action, RSICTC states:

> Although RSICTC was not included in the January 16, 2014 meeting, the issue of tank car safety cannot be resolved without input from the owners and manufacturers of the tank cars. The RSICTC members and other AAR task force stakeholders have met repeatedly to review this issue with only

limited forward progress. As key stakeholders, RSICTC members have reviewed the follow-up letter, and reached consensus on a set of guiding principles to respond to your request. On February 5, 2014, the RSICTC wrote AAR to provide a written copy of these principles in advance of the first meeting of the reconvened AAR Tank Car Committee Task Force T87.6 ('T87.6 Task Force').

RSICTC continued:

In order to provide a timely response to your January 22, 2014 follow-up letter, we recommend the reconvened T87.6 Task Force focus on and adopt the following principles, for ultimate submission to the Pipeline and Hazardous Materials Safety Administration (''PHMSA''), which represent the consensus of the tank car manufacturing and leasing industry:

1. Newly ordered tank cars, ordered after a date certain agreed upon by PHMSA and the industry, to be used to transport crude oil or ethanol must have a jacket, full height head shield and thermal protection.

2. Tank cars built to the CPC–1232 standard (both jacketed and non-jacketed) will be allowed to remain in unrestricted service for their full statutory life, with possible modification to those existing tank cars limited to pressure relief valves and bottom outlet valve handles, based on future regulatory requirements or industry standards.

3. Legacy tank cars (non-CPC–1232 compliant) used for Class 3, PG III materials will be allowed to remain in unrestricted service for their full statutory life, with possible modification to those existing tank cars limited to pressure relief valves and bottom outlet valve handles, based on future regulatory requirements or industry standards.

4. Until such a time when standards applicable to legacy tank cars are developed, non-CPC–1232 compliant tank cars may not be newly assigned into crude oil or ethanol service.

5. Modification requirements for legacy tank cars used for Class 3, PG I and II service (including crude oil and ethanol) need to be developed based on the nature of the risks associated with various products.

6. Priority should be placed on modifying legacy tank cars used for crude oil and ethanol. Timelines for modifying legacy tank cars used for other Class 3, PG I and II service should be based on a risk assessment.

7. It is possible that some types of crude oil may require packaging in a DOT tank car class other than a DOT Specification 111 and RSI wishes to participate in that evaluation process.

The voluntary actions taken by industry as a result of the Call to Action are necessary steps to improve safety. In this NPRM we are proposing to adopt and expand on the key voluntary actions taken with regard to speed restrictions, braking, and routing for HHFTs, in addition to, classification verification requirements.

On February 25, 2014, DOT issued an Emergency Restriction/Prohibition Order requiring those who offer crude oil for transportation by rail to ensure that the product is properly tested and classified in accordance with Federal safety regulations, which was superseded by a revised and amended Order on March 6, 2014, clarifying the requirement.[40] The March 6th Amended Emergency Restriction/Prohibition Order requires that all rail shipments of crude oil that is properly classed as a flammable liquid in Packing Group (PG) III material be treated as a PG I or II material, until further notice. The Amended Emergency Order also authorized PG III materials to be described as PG III for the purposes of hazard communication.

On May 7, 2014, DOT published another Emergency Restriction/Prohibition Order requiring all railroads that operate trains containing one million gallons of Bakken crude oil to notify SERCs about the operation of these trains through their States.[41] Specifically, this notification should identify each county, or a particular state or commonwealth's equivalent jurisdiction (e.g., Louisiana parishes, Alaska boroughs, Virginia independent cities), in the state through which the trains will operate. On the same day, FRA and PHMSA issued a safety advisory recommending that offerors and carriers of Bakken crude oil use tank car designs with the highest level of integrity available in their fleets.[42]

C. NTSB Safety Recommendations

As previously discussed, in addition to the efforts of PHMSA and FRA, the NTSB has taken a very active role in addressing the risks posed by the transportation of large quantities of flammable liquids by rail. On January 23, 2014 the NTSB issued to PHMSA Safety Recommendations R–14–4 through R–14–6. These recommendations are derived from the NTSB's participation in the Transportation Safety Board of Canada's (TSB) investigation of the July 6, 2013 Lac-Mégantic derailment. In the letter, NTSB urges PHMSA and FRA to take action to address routing, oil spill response plans, and identification and classification of flammable liquids by rail. In these recommendations, the NTSB recognizes that rail shipments of flammable liquids have sharply increased in recent years as the United States experiences unprecedented growth in oil production. The letter is available for review in the public docket for this rulemaking.

As noted below, NTSB has issued recommendation R–14–5, for PHMSA to revise spill response planning thresholds contained in Title 49 Code of Federal Regulations Part 130 to require comprehensive response plans to effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products. PHMSA is not addressing this recommendation through this NPRM. However, we are concurrently issuing an Advance Notice of Proposed Rulemaking in PHMSA Docket Number PHMSA–2014–0105 to gather more information on this topic from railroads, first responders, state and local jurisdictions, and all other interested parties.

Previously, on March 2, 2012, the NTSB issued Railroad Accident Report RAR–12–01, available for review in the public docket for this rulemaking. In that report, NTSB determined that one of the probable causes of the June 19, 2009 train accident in Cherry Valley, Illinois, in which several derailed cars released ethanol and caught fire, fatally injuring a passenger in a stopped automobile at the grade crossing where the derailment occurred and seriously injuring two other passengers in the automobile, was the washout of the track structure at the grade crossing and failure to notify the train crew of the known washout. NTSB also determined that inadequate design features of a DOT Specification 111 rail tank car made it susceptible to damage and catastrophic loss of hazardous material during the train accident and, thus, contributed to the severity of the incident. On March 2, 2012, the NTSB issued Safety Recommendations R–12–5 thru R–12–8, which recommended that PHMSA take action to enhance newly manufactured and existing tank cars used for the transportation for ethanol and crude oil in PG I and II. (Safety Recommendation R–12–8 was closed by the NTSB on September 20, 2012).[43] In addition, NTSB reiterated Safety Recommendation R–07–4 and urged PHMSA to require that railroads immediately provide to emergency responders accurate, real-time

[40] See Docket No. DOT–OST–2014–0025. See also *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Amended_Emergency_Order_030614.pdf.*

[41] *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_D9E224C13963CAF0AE4F15A8B3C4465BAEAF0100/filename/Final_EO_on_Transport_of_Bakken_Crude_Oi_05_07_2014.pdf.*

[42] *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_9084EF057B3D4E74A2DEB5CC86006951BE1D0200/filename/Final_FRA_PHMSA_Safety_Advisory_tank_cars_May_2014.pdf.*

[43] See: *http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/NTSB%20Files/R-12-8-Acceptable-Response.pdf.*

information regarding the identity and location of all hazardous materials on a train.

These accidents demonstrate that major loss of life, property damage, and environmental consequences can occur when large volumes of crude oil or other flammable liquids are transported in a HHFT involved in an accident. Table 12 provides a summary of the NTSB Safety Recommendations and identifies the effect of this action on those recommendations:

TABLE 12—RAIL-RELATED NTSB SAFETY RECOMMENDATIONS

NTSB recommendation	Summary	Addressed in this rule?
R–07–4	Recommends that PHMSA, with the assistance of FRA, require that railroads immediately provide to emergency responders accurate, real-time information regarding the identity and location of all hazardous materials on a train.	No.
R–12–5	Recommends that PHMSA require all newly-manufactured and existing general service tank cars authorized for transportation of denatured fuel ethanol and crude oil in PGs I and II have enhanced tank head and shell puncture resistance systems and top fittings protection that exceed existing design requirements for DOT Specification 111 tank cars.	Yes.
R–12–6	Recommends that PHMSA require all bottom outlet valves used on newly-manufactured and existing non-pressure tank cars are designed to remain closed during accidents in which the valve and operating handle are subjected to impact forces.	Yes.
R–12–7	Recommends that PHMSA require all newly-manufactured and existing tank cars authorized for transportation of hazardous materials have center sill or draft sill attachment designs that conform to the revised AAR design requirements adopted as a result of Safety Recommendation R–12–9.	No.*
R–12–8	Recommends that PHMSA inform pipeline operators about the circumstances of the accident and advise them of the need to inspect pipeline facilities after notification of accidents occurring in railroad rights-of-way.	Closed.**
R–14–1	Recommends that FRA work with PHMSA to expand hazardous materials route planning and selection requirements for railroads under the HMR to include key trains transporting flammable liquids as defined by the Association of American Railroads Circular No. OT–55–N and, where technically feasible, require rerouting to avoid transportation of such hazardous materials through populated and other sensitive areas.	Yes.
R–14–2	Recommends that FRA develop a program to audit response plans for rail carriers of petroleum products to ensure that adequate provisions are in place to respond to and remove a worst-case discharge to the maximum extent practicable and to mitigate or prevent a substantial threat of a worst-case discharge.	No.***
R–14–3	Recommends that FRA audit shippers and rail carriers of crude oil to ensure they are using appropriate hazardous materials shipping classifications, have developed transportation safety and security plans, and have made adequate provision for safety and security.	Yes.
R–14–4	Recommends that PHMSA work with FRA to expand hazardous materials route planning and selection requirements for railroads under Title 49 Code of Federal Regulations 172.820 to include key trains transporting flammable liquids as defined by the AAR Circular No. OT–55–N and, where technically feasible, require rerouting to avoid transportation of such hazardous materials through populated and other sensitive areas.	Yes.
R–14–5	Recommends that PHMSA revise the spill response planning thresholds contained in Title 49 Code of Federal Regulations Part 130 to require comprehensive response plans to effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products.	No.***
R–14–6	Recommends that PHMSA require shippers to sufficiently test and document the physical and chemical characteristics of hazardous materials to ensure the proper classification, packaging, and record-keeping of products offered in transportation.	Yes.

* Under R–12–9, NTSB recommends that AAR: Review the design requirements in the AAR Manual of Standards and Recommended Practices C–III, ''Specifications for Tank Cars for Attaching Center Sills or Draft Sills,'' and revise those requirements as needed to ensure that appropriate distances between the welds attaching the draft sill to the reinforcement pads and the welds attaching the reinforcement pads to the tank are maintained in all directions in accidents, including the longitudinal direction. These design requirements have not yet been finalized by the AAR.

** On July 31, 2012, PHMSA published in the **Federal Register** (77 FR 45417) an advisory bulletin to all pipeline operators alerting them to the circumstances of the Cherry Valley derailment and reminding them of the importance of assuring that pipeline facilities have not been damaged either during a railroad accident or other event occurring in the right-of-way. This recommendation was closed by NTSB on September 20, 2012. This action is accessible at the following URL: *http://phmsa.dot.gov/pipeline/regs/ntsb/closed*.

*** PHMSA in consultation with FRA is concurrently publishing an ANPRM (Docket Number PHMSA–2014–0105) that will address these recommendations.

IV. Comments on the ANPRM

A. *Commenter Key.* As of June 2014, Table 13 provides a list of comments posted to the docket.

TABLE 13—COMMENTER KEY

(017) Allen Maty	(018) Emanuel Guerreiro.
(019) Brant Olson	(021) Eugene Matzan/Commercial Wheel System.
(022) City of Loves Park	(023) Senator Charles Schumer.
(024) Village Board of Iverness, IL	(025) City of Wood Dale, IL.
(026) Barrington Township, IL	(027) Village of Mt. Prospect, IL.
(028) Carol Stream, IL	(029) Village of Schiller Park, IL.
(030) City of Plano, IL	(031) City of Frankfort, IL.
(032) Village of Hainesville, IL	(033) City of Crest City Council, IL.
(034) Village of Vernon Hills,	(035) Village of Glendale Heights.
(036) Village of South Barrington, IL	(037) Volpe National Transportation Systems Center (Volpe), Research and Innovative Technology Administration, DOT.
(038) Volpe National Transportation Systems Center (Volpe)	(039) Village of Gilberts, IL.
(040) Village of Wadsworth, IL	(041) City of Braidwood, IL.
(042) Bartlett Fire Protection District, IL	(043) Rolling Meadows, IL.
(044) Compressed Gas Association (CGA): P–1519	(045) City of Warrenville, IL.
(046) City of Highland Park, IL	Village of Oswego, IL.
(048) Anonymous	(049) Trudy McDaniel.
(050) Village of Mokena, IL	(052) Village of North Aurora, IL.
(053) Metro West Council of Government, Aurora, IL	(054) Village of Elburn, IL.
(055) Village of Hampshire, IL	(056) Village of Wayne, IL.
(057) Village of Green Oaks, IL	(058) Village of Western Springs, IL.
(059) Village of Hinckley, IL	(060) Village of Diamond, IL.
(061) Village of Lake Barrington, IL	(062) Vermont League of Cities and Towns, Montpelier, Vermont.
(063) City of Prospect, IL	(064) Fred Millar.
(065) Megan Joyce	(066) Christopher Lish.
(067) Village of Kaneville, IL	(068) Village of North Barrington, IL.
(069) Village of Tower Lakes, IL	(070) Barrington Area Council of Governments (BACOG), Barrington, IL.
(072) Rail Users Network (RUN)	(074) Village of Deer Park, IL.
(075) Robert Hodge	(076) Skagit Audubon, Mount Vernon, WA.
(077) Sheet Metal, Air, Rail, Transportation Union (SMART)	(078) Anonymous.
(079) Growth Energy, Washington, DC	(080) Village of Burlington, IL.
(081) City of St. Charles, IL	(082) Village of Hoffman Estates, IL.
(083) Village of Hawthorn Woods, IL	(084) Village of Hanover Park, IL.
(085) Village of Maple Park, Kane and Dekalb Counties, IL	(086) City of Carbondale, IL.
(087) Village of Campton Hills, IL	(089) CREDO Action (CREDO).
(090) Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA).	(091) James Jackson.
(092) Eldon Jacobson	(093) The Regional Answer to Canadian National (TRAC).
(094) Eva Lee	(095) Cuba Township, IL.
(096) Village of Chicago Ridge, IL	(098) Railway Supply Institute (RSI).
(099) Solvay USA (Solvay)	(100) U.S. Chemical Safety Board (USCSB).
(101) Sierra Club: 23,200 commenters	(102) Mary Ruth Holder.
(103) Michael Bailey	(104) Phyllis Dolph.
(105) Nathan Luke	(106) Russell Pesko.
(107) Michael Reich	(108) David C. Breidenbach.
(109) The Fertilizer Institute (TFI)	(110) Village of Barrington, IL and the TRAC Coalition.
(111) David C. Breidenbach	(112) Montana Department of Environmental Quality (MTDEQ).
(113) City of Lake Forest, IL	(114) Maine Municipal Association, Augusta, ME (MMA).
(115) City of Northlake, IL	(116) Village of Minoa, NY.
(117) City of Coon Rapids, MN	(118) Village of Grayslake, IL.
(119) Eastman Chemical Company (ECC)	(120) City of Fort Collins, CO.
(121) CREDO Action (CREDO; replaces 089): 66,064 commenters	(122) Oil Change International (OCI): 8,727 commenters.
(123) The Chlorine Institute (CI)	(124) Renewable Fuels Association (RFA).
(125) Village of Berkeley, IL	(126) Watco Companies L.L.C. (Watco).
(127) The National Industrial Transportation League (NITL)	(128) Institute of Makers of Explosives (IME).
(129) Hess Corporation (Hess)	(130) North American Freight Car Association (NAFCA).
(131) New Progressive Alliance (NPA)	(132) The Greenbrier Companies, Inc. (Greenbrier).
(133) The Railway Supply Institute Committee on Tank Cars (RSICTC)	(134) GLNX Corporation (GLNX).
(135.1) Dow Chemical Company (Dow)	(135.2) Dow Chemical Company and Union Pacific Railroad (DCCUPR).
(136) American Chemistry Council (ACC)	(137) Dangerous Goods Advisory Council (DGAC).
(138) Forest Ethics: 1,489 commenters	(139) American Petroleum Institute (API).
(140) National Transportation Safety Board (NTSB)	(141) Petroleum Association of Wyoming (PAW).
(142) Anonymous	(143) Rein Attemann.
(144) Natural Resources Defense Council (NRDC)	(145) Lloyd Burton, PHD.

TABLE 13—COMMENTER KEY—Continued

(146) City of Madison, WI	(147) City of Northlake, IL.
(148) Shell Chemical LP (Shell)	(149) The Accurate Tank Advisor (ATA).
(150) Senator Charles E. Schumer	(151) Call to Action Meeting Documentation.
(152) City of Elmhurst, IL	(153) The Sierra Club: 52,615 commenters.
(154) Leif Jorgensen	(155) U.S. DOT/PHMSA Meeting Record.
(156) Railway Supply Institute Comments	(157) BNSF Meeting Record.
(158) Department of Law City of Chicago	(159) City of Chicago Comments.
(160) Irv Balto Comments	(161) Irv Balto Comments.
(162) EO 12866 Meeting w/API 05.19.14	(163) Meeting w/American Chemistry Council 05.12.14.
(164) Meeting w/Growth Energy and RFA 05.12.14	(165) Meeting w/North Dakota Petroleum Council 05.12.14.
(166) Meeting w/Quantum Energy 05.21.14	(176) Meeting w/Statoil 05.12.14.

B. Summary of Comments Relevant to the Proposed Amendments in this NPRM

In response to the September 6, 2013 ANPRM, PHMSA received 113 comments representing over 152,000 signatories related to the eight petitions for rulemaking and four NTSB recommendations referenced in the ANPRM and applicable to the transportation of hazardous materials in commerce. PHMSA solicited public comment on whether the potential amendments would enhance safety and clarify the HMR with regard to rail transport. Specifically, these potential amendments, if adopted, would do the following: (1) Relax regulatory requirements to afford FRA greater discretion to authorize the movement of non-conforming tank cars; (2) impose additional requirements that would correct an unsafe condition associated with pressure relief valves (PRV) on rail cars transporting carbon dioxide, refrigerated liquid; (3) relax regulatory requirements applicable to the repair and maintenance of DOT Specification 110, DOT Specification 106, and ICC 27 tank car tanks (ton tanks); (4) relax regulatory requirement for the removal of rupture discs for inspection if the removal process would damage, change, or alter the intended operation of the device; and (5) impose additional requirements that would enhance the standards for DOT Specification 111 tank cars used to transport PG I and II hazardous materials. This NPRM addresses the four petitions for rulemaking that are related to the DOT Specification 111 tank car (P–1577, P–1587, P–1595, and P–1612). The NTSB recommendations directly relate to the enhancement of DOT Specification 111 tank cars.

We received comment submissions from local communities, cities, and towns; rail carriers; offerors; suppliers of equipment; tank car manufacturers; environmental groups; NTSB; and members of the U.S. Congress. The comments provide many potential solutions to the risks associated with HHFTs. A common theme among the commenters is that they support changes that will prevent another catastrophic train accident. Table 14 provides a brief summary based on key concerns of groups of commenters:

TABLE 14—GENERAL OVERVIEW OF COMMENTS RECEIVED ON THE HM–251 ANPRM

Group of commenters	Number of comments	Comment summary
Local communities, cities, towns.	61 municipal and state government entities.	Provided overwhelming support for: • Higher integrity tank car construction standards; • Revised operational procedures; and • Standards applicable to newly constructed and existing DOT 111 tank cars transporting any Packing Group I and II materials.
Concerned public	223 individual commenters	Provided overwhelming support for: • Petition P–1587 (Barrington, IL); and • NTSB Safety Recommendations that requires higher integrity construction and operational standards for new and existing DOT–111 tank cars.
Rail carriers	AAR, American Short Line and Regional Railroad Association, GNLX Corporation.	In their comments AAR and ASLRRA proposed additional enhancements to its original petition for rulemaking (P–1577) such as: • Mandating the jacketed version of the specifications discussed in the petition for flammable liquids; • For flammable liquids, requiring high-flow capacity pressure relief devices; • Requiring thermal blankets or thermal coatings when constructing or modifying tank cars used to transport all packing group I and II materials and flammable liquids in packing group III; and • The employment of designs that ensure bottom outlet valves will remain closed when the operating handles are subject to impact forces.
Offerors	Multiple	Commenters solicit PHMSA and FRA to: • Address accident root causes and to keep tank cars on the track; • Conduct suggested initiatives, including improvements in inspection and track maintenance protocols; • Utilize available technology to assist in reducing human error (e.g., Positive Train Control); and • Improve communication systems for rail operations.

TABLE 14—GENERAL OVERVIEW OF COMMENTS RECEIVED ON THE HM–251 ANPRM—Continued

Group of commenters	Number of comments	Comment summary
Tank Car manufacturers	Watco, Railway Supply Institute, SMART, Greenbrier Companies, North American Freight Car Association.	The consensus among manufacturers of tank cars is as follows: • The increase of tank shell thickness and application of tank head protection will substantially improve the puncture resistance of DOT–111 tank cars and provide better protection in the event of a derailment; • Improved puncture resistance will result in less product release and, thus, smaller fires in the event of a train accident; • The P–1577 (Petition) tank car's enhancements include a pressure relief device with a higher exit flow and lower trigger point. This change to the pressure relief device will improve the potential for this equipment to operate as intended in a fire situation; and • Enhancement is consistent with the T87.6 Task Force's recommendation. If any fire exposure should occur, the enhanced pressure relief system will serve to reduce the probability of a high-energy release event. • Tank car requirements for new cars should be more extensive than the retrofit requirements for existing cars.
Environmental groups	Over 152,000 signatories ...	Support of NTSB Safety Recommendations by: • Expressing concern over the responsibility of local governments having to provide emergency response units to manage the impact of derailments in communities across the country; and • Expressing concern over the significant costs to society associated with clean-up and environmental remediation.
NTSB	.....	Urges PHMSA to: • Take immediate action to require a safer package for transporting flammable hazardous materials by rail; and • Take regulatory action that applies to new construction and the existing tank car fleet • With FRA, take action to address routing, oil spill response plans, and identification and classification of flammable liquids by rail.
Congressional interest	13 U.S. House and Senate members.	Urges PHMSA to: • Take immediate action to require a safer package for transporting flammable hazardous materials by rail.

The most frequent comments received in response to the ANPRM follow. These issues included operational controls that could be implemented to address rail safety issues and how the existing fleet of cars would be affected in the event of the adoption of a new tank car standard (e.g., retrofitting). These specific issues and some of the comments received are summarized below.

Operational issues—RSICTC commented that, ''[t]he overall safety of hazardous material transportation by rail cannot be achieved by placing the sole burden of that goal on the designs of tank cars. Therefore while the industry supports safety-enhancing improvements to the designs of tank cars, it also supports operational enhancements that will address these root causes.'' Similarly, equipment suppliers encouraged FRA to publish its final rule on rail integrity. Further, the API states in its comments that, ''broken rails or welds caused more major derailments than any other factor. According to task force 87.6, broken rails or welds resulted in approximately 670 derailments between 2001 and 2010.'' Further, it states, ''RSICTC also supports the work of the task force to examine additional operational enhancements such as the alternative brake signal propagations systems, speed restrictions for ''Key Trains''—unit trains containing 20 or more loaded tank cars of PG I and II hazardous materials, enhanced track inspection programs and improvements to the emergency response system.''

Retrofits—While the P–1577 tank car enhancements will significantly improve safety for newly manufactured tank cars, RSICTC strongly urges PHMSA to promulgate a separate rulemaking for existing tank cars that is uniquely tailored to the needs of the existing DOT–111 tank car fleet. Further, it states, ''Should modifications be made to the existing jacketed DOT–111s, we again urge PHMSA to allow these modified cars to remain in active service for the duration of their regulatory life.'' RSICTC also submits that PHMSA adopt a ten-year program allowing compliance to be achieved in phases through modification, repurposing or retirement of unmodified tank cars in Class 3, PG I and II flammable liquid service. Tank car modifications supported by RSICTC include adding head shields, protecting top and bottom fittings and adding pressure release valves or enhancing existing pressure release valves. Greenbrier, a tank car manufacturer, commented that, ''the most vital of these modifications is addition of a trapezoidal or conforming half-height head shield to prevent penetration of tank cars by loose rails. Together with the top and bottom fittings protections and enhanced release valves, the improvements can significantly limit the likelihood of breaching the tank car.'' Further, Greenbrier is of the opinion that the ten-year timeline suggested by RSICTC is excessive and unmodified tank cars could and should be removed from hazardous materials service much sooner. API and other commenters state in their comments that they are strongly opposed to mandating any retrofits beyond the higher-flow pressure relief device recommended by the T87.6 Task Force for thermal protection due to the lack of economic and logistical feasibility.

V. Discussion of Comments and Section-by-Section Review

The vast majority of commenters request prompt action by PHMSA to address the risk associated with HHFTs. PHMSA agrees that in light of the recent accidents involving HHFTs prompt action must be taken to address these trains. Therefore, we limit our

discussion of the comments received in response to the ANPRM to those issues related to HHFTs. The remaining comments to the ANPRM and our August 27–28, 2013 public meeting will be addressed in a future rulemaking. Comments are available in the public docket for this NPRM, viewable at *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES** section above).

A. High-Hazard Flammable Train

In the ANPRM we asked several questions regarding AAR Circular No. OT–55–N. Specifically, we asked if it adequately addressed the concerns of the T87.6 Task Force, especially regarding speed restrictions. We also asked if we should incorporate the ''key train'' requirements contained in AAR Circular No. OT–55–N into the HMR, or if it should be expanded to include trains with fewer than 20 cars.

Several commenters indicate that additional operational requirements should be based upon the definition for a ''key train'' as provided by AAR Circular No. OT–55–N. In addition, NTSB Recommendation R–14–4 states,

> Work with the Federal Railroad Administration to expand hazardous materials route planning and selection requirements for railroads under Title 49 Code of Federal Regulations 172.820 to include key trains transporting flammable liquids as defined by the Association of American Railroads Circular No. OT–55–N and, where technically feasible, require rerouting to avoid transportation of such hazardous materials through populated and other sensitive areas.

Based on the Appendix A to Emergency Order No. 28 and the revised definition of a ''key train'' under AAR Circular No. OT–55–N, PHMSA is proposing to add a definition of ''high-hazard flammable train'' to § 171.8. Under the proposed definition, the term would mean a single train containing 20 or more tank carloads of Class 3 (flammable liquid) material.

Section 173.120 of the HMR defines a flammable liquid as a liquid having a flash point of not more than 60 °C (140 °F), or any material in a liquid phase with a flash point at or above 37.8 °C (100 °F) that is intentionally heated and offered for transportation or transported at or above its flash point in a bulk packaging, with certain exceptions. For transportation purposes, examples of commodities that typically meet this definition are acetone, crude oil, ethanol gasoline, and ethyl methyl ketone. A Class 3 (flammable liquid) material is further assigned to Packing Group I, II, or III, based on its degree of danger, that is, great, medium, or minor, respectively.

Because crude oil is a mined liquid, its flash point and initial boiling point are variable and, as such, can be assigned to Packing Groups I, II, or III. Because ethanol is not a mined liquid, its initial boiling point and flash point are known (78 °C and 9 °C respectively). Thus, ethanol is assigned to Packing Group II. That said, our analysis finds that only crude oil and ethanol shipments would be affected by the limitations of this rule as they are the only known Class 3 (flammable liquid) materials transported in trains consisting of 20 cars or more.

While both the Appendix A to Emergency Order No. 28 and the revised definition of a ''key train'' under AAR Circular No. OT–55–N include Division 2.1 (flammable gas) material and combustible liquids, PHMSA is not proposing to include them in the definition of ''high-hazard flammable train'' in this NPRM. By doing so, the existing fleet of DOT Specification 111 tank cars can be repurposed and continue to be used for flammable liquids when *not* being transported in a HHFT and combustible liquids which pose a lower risk than other flammable liquids. PHMSA and FRA seek comment on the definition of a ''high-hazard flammable train'', PHMSA and FRA seek public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

1. PHMSA expects that the definition of HHFT would change the operating practices and tank car packaging primarily for trains that carry crude oil and ethanol. To what extent would definition of HHFT affect the operating practices and tank car packaging trains carrying other Class 3 flammable liquids?

2. Within the definition of HHFT, to what extent would adding or removing hazardous materials or packing groups within a hazardous material class affect the benefits and costs of this rule? In particular, what are the benefits and costs of including Division 2.1 (flammable gas) material and combustible liquids within the definition of HHFT?|

3. To what extent do the covered hazardous materials, including crude oil and ethanol, have differing risks when they are in HHFTs?

As described in the Overview section of this preamble, above, we believe that most, if not all, of the rail community transporting oil, including crude oil transported as a hazardous material, is subject to the basic response plan requirement of 49 CFR 130.31(a), based on the understanding that most, if not all, rail tank cars being used to transport crude oil have a capacity greater than 3,500 gallons. However, a comprehensive response plan for shipment of oil is only required when the oil is in a quantity greater than 42,000 gallons per package. Accordingly, the number of railroads required to have a comprehensive response plan is much less, or possibly non-existent, because a very limited number of rail tank cars in use would be able to transport a volume of 42,000 gallons in a single package.[44]

Based on this difference in plans and the recent occurrence of high-profile accidents involving crude oil, the NTSB and TSB have recommended in Safety Recommendation R–14–5 that the Department and PHMSA reconsider the threshold quantity for requiring the development of a comprehensive response plan for the shipment of oil.

While PHMSA will not be specifically addressing Oil Spill Response Plans in this rulemaking, we will be addressing this topic in this advance notice of proposed rulemaking under docket number PHMSA–2014–0105 (RIN 2137–AF08). In this ANPRM we will be seeking comment on the Oil Spill Prevention and Response Plans as they relate to the rail transport of large quantities of oil. Specifically, we seek comment on threshold quantity for a comprehensive plan to § 130.31 and other issues related to the Oil Spill Prevention and Response Plans as they relate to rail transport.

B. Notification to State Emergency Response Commissions of Petroleum Crude Oil Train Transportation

As previously discussed, on May 7, 2014, DOT issued an Emergency Restriction/Prohibition Order in Docket No. DOT–OST–2014–0067 (Order).[45] That Order required each railroad transporting 1,000,000 gallons or more of Bakken crude oil in a single train in commerce within the U.S. provide certain information in writing to the SERC for each state in which it operates such a train. The notifications made under the Order must include estimated frequencies of affected trains transporting Bakken crude oil through

[44] The 2014 AAR's Universal Machine Language Equipment Register (UMLER) numbers showed 5 tank cars listed with a capacity equal to or greater than 42,000 gallons, and none of these cars were being used to transport oil or petroleum products.

[45] *http://www.dot.gov/briefing-room/emergency-order.*

each county in the state, the routes over which it is transported, a description of the petroleum crude oil and applicable emergency response information, and contact information for at least one responsible party at the host railroads. In addition, the Emergency Order requires that railroads provide copies of notifications made to each SERC to FRA upon request and, make updated notifications when Bakken crude oil traffic materially changes within a particular county or state (a change of 25 percent or greater from the estimate conveyed to a state in the current notification). DOT issued the Order under the Secretary's authority to abate imminent hazards at 49 U.S.C. 5121(d). The Order was issued in response to the crude oil railroad accidents previously described, and is in effect until DOT rescinds the Order. This proposal, if adopted in a final rule in this rulemaking proceeding, would supplant the requirements in the Order.

In this NPRM, PHMSA is proposing to codify and clarify the requirements of the Order in the HMR, and is requesting public comment on the various facets of this proposal. As previously discussed, the amount of crude oil shipments via railroad tank car is increasing rapidly. The transportation of any hazardous materials is inherently dangerous, and transporting crude oil can be dangerous if the crude oil is released into the environment because of its flammability. This risk of ignition is compounded in the context of rail transportation of crude oil. It is commonly shipped in HHFTs that may consist of over 100 loaded tank cars, and there appear to be uniquely hazardous characteristics of crude oil, as previously discussed in this preamble. With the rising demand for rail carriage of crude oil throughout the U.S., the risk of rail accidents and incidents increases with the increase in the volume and the length of haul of the crude oil shipped. Based on a waybill sample, the total distance field was used to estimate the average length of haul crude oil. PHMSA found that crude oil travels over 1,000 miles on the rail network. As also previously discussed, there have been several significant train accidents in the U.S. and Canada over the last year resulting in deaths, injuries, property and environmental damage that involved crude oil shipments. These accidents have demonstrated the need for action in the form of additional communication between railroads and emergency responders to ensure that the emergency responders are aware of train movements carrying large quantities of crude oil through their communities.

For purposes of this NPRM, PHMSA is proposing regulatory text that would address the same trains as affected by the Emergency Order (i.e., trains transporting 1,000,000 gallons or more of Bakken crude oil). Considering the typical 30,000-gallon capacity railroad tank car used for the transport of crude oil, a 1,000,000-gallon threshold for a unit train would require notification to SERC's or other appropriate state delegated entities for unit trains composed of approximately 35 cars of crude oil.[46] For purposes of the Emergency Order, DOT assumed this was a reasonable threshold when considering that the major incidents described above all involved trains consisting of more than 70 railroad tank cars carrying petroleum crude oil, or well above the Order's threshold of 1,000,000 gallons or more of petroleum crude oil being transported in a single train. In setting this threshold quantity of 1,000,000 gallons in the Order, DOT also relied on a Federal Water Pollution Control Act mandate for regulations requiring a comprehensive spill response plan to be prepared by an owner or operator of an onshore facility.[47]

In the Order, DOT determined that SERCs were the most appropriate point of contact to convey written notifications regarding the transportation of trains transporting large quantities of Bakken crude oil. Each state is required to have a SERC under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). 42 U.S.C. 11001(a). The EPCRA is intended to help local entities plan for emergencies involving hazardous substances.[48] Generally, SERCs are responsible for supervising and coordinating with the local emergency planning committees (LEPC) in states, and are best situated to convey information regarding hazardous materials shipments to LEPCs and state and local emergency response agencies.

After issuance of the Order, DOT received questions from railroads regarding whether Fusion Centers could be utilized to make the notifications required by the Emergency Order. Railroads share information with Fusion Centers under existing § 172.820 of the HMR, PHMSA's regulation governing additional planning requirements for transportation by rail of certain hazardous materials. DOT also received inquiries regarding the Order's implications for Tribal Emergency Response Commissions (TERCs). TERCs have the same responsibilities as SERCs, with the Chief Executive Office of the Tribe appointing the TERC.[49] In response, DOT issued a Frequently Asked Questions (FAQs) guidance document to address these inquiries.[50] In that FAQs document, DOT explained that if a State agrees that it would be advantageous for the information required by this Emergency Order to be shared with a Fusion Center or other State agency involved with emergency response planning and/or preparedness, as opposed to the SERC, a railroad may share the required information with that agency instead of the SERC. DOT also explained that railroads were not required to make notification under the Order to TERCs, but, rather, that DOT would be reaching out to Tribal leaders to inform them that TERCs could coordinate with the appropriate SERC in a state for access to data supplied under the Emergency Order.

After issuance of the Order, railroads were concerned that routing and traffic information required to be provided to SERCs regarding affected crude oil would be made public under individual states' open records laws. DOT has since engaged in discussions with railroads and states to address this concern. As explained in the FAQs document, DOT prefers that this information be kept confidential, and acknowledged that railroads may have an appropriate claim that this information constitutes confidential business information, but that such claims may differ by state depending on each state's applicable laws. DOT encouraged the railroads to work with states to find the most appropriate means for sharing this information (including Fusion Centers or other mechanisms that may have established confidentiality protocols). However, the EO and DOT's subsequent guidance did not require that states sign confidentiality agreements to receive this information, and DOT did not designate the information as Sensitive Security Information (SSI) under the procedures governing such at 49 CFR Part 15. PHMSA understands that despite confidentiality concerns, railroads are complying with the

[46] This approximation assumes that the tank cars would not be entirely filled to capacity.

[47] *See* 40 CFR 112.20. The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, directs the President, at section 311(j)(1)(C) (33 U.S.C. 1321(j)(1)(C)) and section 311(j)(5) (33 U.S.C. 1321(j)(5)), respectively, to issue regulations ''establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.''

[48] *http://www2.epa.gov/epcra.*

[49] *http://www2.epa.gov/sites/production/files/2013–08/documents/epcra_fact_sheet.pdf.*

[50] *http://www.fra.dot.gov/eLib/Details/L05237.*

requirements of the Order and have provided the required information to States.

With regard to the identification of Bakken crude oil versus crude oil extracted from other geographic locations, DOT acknowledges that the HMR's current shipping paper requirements do not distinguish Bakken crude oil from crude oil sourced in other locations. This may present compliance and enforcement difficulties, particularly with regard to subsequent railroads transporting petroleum crude after interchange(s) with an originating or subsequent carrier. DOT explained in the FAQs document that railroads and offerors should work together to develop a means for identifying Bakken crude oil prior to transport, such as a Standard Transportation Commodity Code number, that identifies the crude oil by its geographic source. DOT also stated that for purposes of compliance with the Emergency Order, crude oil tendered to railroads for transportation from any facility directly located within the Williston Basin (North Dakota, South Dakota, and Montana in the United States, or Saskatchewan or Manitoba in Canada) is Bakken crude oil. PHMSA notes it may be possible in any final rule action that this proposed new § 174.310 could be expanded to include threshold quantities of all petroleum crude oils or all HHFTs (versus only trains transporting threshold quantities of Bakken crude oil).

PHMSA therefore seeks public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

1. Whether codifying the requirements of the Order in the HMR is the best approach for the notification requirements, and whether particular public safety improvements could be achieved by requiring the notifications be made by railroads directly to emergency responders, or to emergency responders as well as SERCs or other appropriate state delegated entities.

2. Whether the 1,000,000-gallon threshold is appropriate, or whether another threshold such as the 20-car HHFT threshold utilized in this NPRM's other proposals is more appropriate. If you believe that a threshold other than 1,000,000 gallons is appropriate, please provide any information on benefits or costs of the change, including for small railroads.

3. Comments regarding parallel notification requirements for any affected TERCs.

4. Comments regarding the other topics addressed in the FAQ's document. In particular, PHMSA seeks comments on the confidential treatment of data contained in the notifications to SERCs, and the adoption of a means for identifying Bakken crude oil prior to rail transportation.

5. Whether PHMSA should place restrictions in the HMR on the disclosure of the notification information provided to SERCs or to another state or local government entity.

6. Whether such information should be deemed SSI, and the reasons indicating why such a determination is appropriate, considering safety, security, and the public's interest in information.

7. What burden reduction would result from not having to distinguish the source of the crude oil? What increase in burden would result from the expanded applicability?

C. Rail Routing

We did not solicit comments on routing requirements for HHFTs in the September 6, 2013 ANPRM. However, many government agencies and citizens alike expressed concerns regarding the risks posed by such rail traffic through their communities. Further, the issue was raised during the RSAC hazardous materials working group meetings and the Secretary's Call to Action. As a result of those efforts, the industry has taken steps to extend the routing requirements in § 172.820 of the HMR to certain HHFTs transporting crude oil. AAR indicates that railroads will focus on the risks related to population density along routes by reducing train speed. Based on AAR's response to the Call to Action, railroads will operate trains at 40 mph by July 1, 2014, for any HHFT with at least one non-CPC 1232 DOT Specification 111 tank car loaded with crude oil or one non-DOT specification tank car loaded with crude oil while that train travels within the limits of any high-threat urban area as defined by 49 CFR 1580.3.

We note that under AAR Circular No. OT–55–N, any train that meets the ''key train'' definition is subject to a 50-mph speed restriction. Further, any route defined by a railroad as a key route shall meet certain standards described in OT–55–N. Wayside defective wheel bearing detectors shall be placed at a maximum of 40 miles apart, or an equivalent level of protection may be installed based on improvements in technology. Main track on key routes shall be inspected by rail defect detection and track geometry inspection cars or by any equivalent level of inspection at least twice each year. Sidings on key routes shall be inspected at least once a year, and main track and sidings shall have periodic track inspections to identify cracks or breaks in joint bars. Further, any track used for meeting and passing key trains shall be FRA Class 2 track or higher. If a meet or pass must occur on less than Class 2 track due to an emergency, one of the trains shall be stopped before the other train passes. PHMSA and FRA request comments on the requirements of AAR Circular No. OT–55–N specifically in regard to track inspection. These comments may be considered for future regulatory action.

This NPRM proposes to modify § 172.820 to apply to any HHFT, as PHMSA proposes to define this term in § 171.8 (See discussion in HHFT section.). The routing requirements discussed in this NPRM reflect the practices recommended by the NTSB in recommendation R–14–4, and are in widespread use across the rail industry for security-sensitive hazardous materials (such as chlorine and anhydrous ammonia). As a result, rail carriers must assess available routes using, at a minimum, the 27 factors listed in Appendix D to Part 172 of the HMR to determine the safest, most secure routes for security-sensitive hazardous materials. See the Section (D) ''Overview of Current Regulations Relevant to this Proposal'' of this preamble for more information on routing.

PHMSA seeks public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

1. To what extent would the routing requirements change the operational practices for small railroads, which PHMSA expects to have limited routing options? What are the benefits and costs of applying these requirements to small railroads?

2. How has the voluntary compliance with the routing requirements in response to the Call to Action changed the operational practices for crude oil shipments?

D. Classification and Characterization of Mined Liquids and Gases

As previously discussed, the proper classification and characterization of a hazardous material is critical under the HMR, as it dictates which additional requirements apply, such as the proper

operational controls and proper packaging selection.

Under the HMR, it is critical that the offeror of a material ensure that a hazardous material has been classified and characterized correctly. The classification of a hazardous material triggers the corresponding packaging and hazard communication. Under § 173.22 of the HMR, it is the offeror's responsibility to properly ''class and describe the hazardous material in accordance with parts 172 and 173 of this subchapter.'' When a single material meets more than one hazard class the shipping name must be selected based on the hazard precedence table in § 173.2a. Once an offeror has determined the hazard class of the material, the offeror must select the most appropriate proper shipping name from the HMT.

In the case of crude oil, relevant properties to properly classify a flammable liquid include: flash point, and boiling point (See section 173.120). The HMR do not specifically provide requirements for characterization tests however; relevant properties that may affect the characterization of crude oil include corrosivity, vapor pressure, specific gravity at loading and reference temperatures, and the presence and concentration of specific compounds such as sulfur. Characterization of certain properties enables an offeror to select the most appropriate shipping name, and identify key packaging considerations. Based on the shipping name the HMT provides the list of packagings authorized for use by the HMR. As indicated in § 173.24(e), even though certain packagings are authorized, it is the responsibility of the offeror to ensure that such packagings are compatible with their lading. Such information and determination of the authorized packaging also ensure that the appropriate outage is maintained in accordance with § 173.24(a).

In the September 6, 2013 ANPRM, we did not request comments on the classification of crude oil. Nonetheless, one commenter, David C. Breidenbach, provided several comments regarding the volatility of ''gassy'' crude oil. Mr. Breidenbach's comments suggested the need to conduct pre-movement sampling and safety certification, require pressurized DOT Specification 112 tank cars for certain PG I crude oil, and ensure that field operators adjust well head separators to remove gas and develop gas processing infrastructure.

Classification and characterization were raised during an RSAC hazardous materials working group meeting, in the Secretary's Call to Action, under *Operation Classification,* in the agencies' Joint Safety Advisories, and in the amended and restated March 6, 2014 DOT Emergency Order. PHMSA's January 2, 2014 Safety Alert warns of crude oil variability and emphasizes proper and sufficient testing to ensure accurate characterization and classification. The Safety Alert expresses PHMSA's concern that unprocessed crude oil may affect the integrity of packaging or present additional hazards related to corrosivity, sulfur content, and dissolved gas content. Proper classification of crude oil has been a major focus of the PHMSA and FRA initiative referred to as *Operation Classification* and the Secretary's Call to Action. Further, the Department's February 25, 2014 Emergency Order, as revised on March 6, 2014, requires those who offer crude oil for transportation by rail to ensure that the product is properly tested and classified in accordance with Federal safety regulations. As a result of comments, concerns, and government and industry emphasis on proper classification, in this NPRM, PHMSA proposes changes to the HMR that clarify and enhance the current classification requirements for mined gases and liquids.

The HMR require both the proper classification of hazardous materials and the selection and use of proper packaging. Packaging groups are designed to assign a degree of danger presented within a particular hazard class. Packing Group I poses the highest danger (''great danger'') and Packing Group III the lowest (''minor danger''). PHMSA is proposing to revise the bulk packaging sections §§ 173.241, 173.242, and 173.243 to provide the timeline for continued use of existing DOT Specification 111 tank cars in HHFT service in accordance with the following table:

TABLE 15—TIMELINE FOR CONTINUED USE OF DOT SPECIFICATION 111 TANK CARS IN HHFT SERVICE

Packing group	DOT 111 not authorized after
I	October 1, 2017.
II	October 1, 2018.
III	October 1, 2020.

Based on the RSI's presentation to the NTSB on tank car production capacity, it is anticipated that 33,800 tank cars could be manufactured per year. In addition, PHMSA assumes that the current fleet size in HHFT service is 72,000. PHMSA used this data to provide a phase out period for DOT Specification 111 tank cars in certain HHFT service that would ensure that sufficient time was provided to avoid a fleet shortage in HHFT service. PHMSA requests comments on the proposed timelines for discontinuing use of DOT Specification 111 tank cars in HHFT service.

In Recommendation R–14–6 the NTSB recognized the importance of sufficient testing and documentation of the physical and chemical characteristics of hazardous materials to ensure the proper classification, packaging, and record-keeping of products offered in transportation. We agree with NTSB. Classification decisions are essential for the selection of proper equipment (tank, service equipment, interior lining or coating) and the use, maintenance, and qualification of the equipment when shipping hazardous materials. Proper classification is also essential for accommodating the risk-based implementation schedule for increased tank car requirements described below. The statement on a shipping paper is the offeror's certification that a hazardous material is properly classified, described, packaged, marked and labeled, and in proper condition for transportation according to applicable DOT regulations. Packaging decisions are based on the information provided by the offeror. Incorrect classification and characterization of hazardous material may lead to failures throughout the transportation system.

Examples where improper information from an offeror may result in unsafe transportation conditions are found throughout the HMR.

- Section 180.509(i) requires an owner of the interior lining or coating of a tank car transporting a material that is corrosive or reactive to the tank to ensure an inspection adequate to detect defects or other conditions that could reduce the design level of reliability and safety of the tank.
- Section 180.509(i) also requires the owner of a tank car used to transport a hazardous material to ensure the lining conforms to §§ 173.24(b)(2) and (b)(3) of the HMR. Further, the owner ''must use its knowledge of the service life of each coating or lining and commodity combination to establish an appropriate inspection interval for that coating or lining and commodity combination.''
- Under § 180.509(k) an owner of service equipment ''must analyze the service equipment inspection and test results for any given lading and, based on the analysis, adjust the inspection and test frequency to ensure that the design level of reliability and safety of the equipment is met.''

• Appendix D to Part 180 identifies hazardous materials corrosive to tanks or service equipment, stating ''While every effort was made to identify materials deemed corrosive to the tank or service equipment, owners and operators are cautioned that this list may not be inclusive.'' Tank car owners and operators are reminded of their duty to ensure that no in-service tank will deteriorate below the specified minimum thickness requirements in this subchapter. See § 180.509(f)(3).

The properties of mined gases and liquids, including crude oil, are variable based on time, method, and location of extraction. Whereas manufactured goods often undergo a strict quality assurance process to ensure characteristics are within defined parameters, mined gases and liquids do not. Unlike manufactured goods, organic materials from oil and gas production represent a unique challenge in regards to classification. Differences in the chemical makeup of the raw material can vary over time and geographical location. Typically, organic materials from oil and gas production at a well head are passed through a ''separator'' to remove the gas, sediment, and water from the crude. As such, there are multiple hazardous materials that are commonly shipped from the well-site including: Crude, natural gas condensate, and natural gas liquid.

Given this variability, there is a responsibility under § 173.22 of the HMR for an offeror to ensure the proper characterization and classification of their materials. Proposed § 173.41 would explicitly require a sampling and testing program for mined gases and liquids, including crude oil. Under proposed § 173.41(a), this program must address the following key elements that are designed to ensure proper classification and characterization of crude oil:

• Frequency of sampling and testing to account for appreciable variability of the material, including the time, temperature, means of extraction (including any use of a chemical),[51] and location of extraction;

• Sampling at various points along the supply chain to understand the variability of the material during transportation;

• Sampling methods that ensure a representative sample of the entire mixture, as packaged, is collected;

• Testing methods to enable complete analysis, classification, and characterization of the material under the HMR;

• Statistical justification for sample frequencies;

• Duplicate samples for quality assurance purposes; and

• Criteria for modifying the sampling and testing program.

The sampling and testing program should account for appreciable differences in the material as a result of time, temperature, etc., but need not measure ordinary and minor differences in materials. If an offeror assigns all of its materials to the most stringent packing group classification, this may serve as one possible justification for a lower frequency of testing. The offeror would still need to justify less frequent testing of other properties such as corrosivity. Sampling along the length of the supply chain will be used to understand the processing and transportation effects but may be less frequent than final testing prior to rail car loading.

As a result of Secretary Foxx's call to Action, on February 21, 2014 the API agreed to pursue various actions including to work with PHMSA and other representatives from the Department of Transportation to share information and expertise on crude oil characteristics. API created a working group on entitled the ''API Classification & Loading of Crude Oil Work Group.'' Within this working group were two task groups: ''Crude Oil Classification Task Group'' and the ''Crude Oil Quantity & Quality Measurement Task Group.''

A six month schedule was launched in early 2014, with working groups meeting every two weeks throughout the country. The goal of this group was to develop a consensus industry standard for crude oil testing, sampling and unloading. PHMSA personnel have been active participants in these meetings. In June 2014 the API working group finalized a draft standard ''Recommend Practices 3000'' (RP 3000). RP 3000 provides industry best practices, including those regarding testing and sampling methods. The draft standard is currently in the balloting process with API members and is on a path to finalization and thus in not considered in the rulemaking. PHMSA is encouraged by the development of such an industry standard and API's continued work in the standard and beyond to improve the accuracy of classification of materials and the overall safety or operational rail requirements. Once finalized PHMSA may consider adoption of such a standard and in addition those in the regulated community may petition for the incorporation of such standard through the processes outlined in section 106.95 of the HMR.

Proposed § 173.41(b) would link the certification requirements, as prescribed in § 172.204, to the sampling and testing program. Specifically, by certifying the shipment in accordance with § 172.204, the offeror of the hazardous material is certifying compliance with the sampling and testing program for mined gases and liquids described above. Based on comments to the ANPRM, we considered regulatory changes related to the vapor pressure of a flammable liquid. As mentioned in the Background section of this preamble, above, prior to 1990 the HMR clearly indicated that the packaging requirements for flammable liquids are based on a combination of flash point, boiling point, and vapor pressure. The regulations provided a point at which a flammable liquid had to be transported in a tank car suitable for compressed gases, commonly referred to as a ''pressure car'' (e.g., DOT Specifications 105, 112, 114, and 120 tank cars). Specifically, § 173.119(f) indicated that flammable liquids with a vapor pressure that exceeded 27 psia but less than 40 psia at 100 °F (at 40 psia, the material met the definition of a compressed gas), were only authorized for transportation in one of the authorized pressure cars. The older regulations recognized that those flammable liquids that exhibited high vapor pressures, such as those liquids with dissolved gases, require additional care in packaging. We are not currently proposing any regulatory changes related to vapor pressure of a material. However, PHMSA seeks comments from the regulated community on the role of vapor pressure in the classification, characterization, and packaging selection process for a flammable liquid and whether regulatory changes to establish vapor pressure thresholds for packaging selection are necessary.

Proposed § 173.41(c) would require that the sampling and testing program be documented in writing and retained while it remains in effect. It should be noted the while the sampling and testing program is required be documented in writing and retained while it remains in effect we are not require a specified retention requirement for the actual testing records. We acknowledge testing results will be supplemental materials to support the requirements of the sampling and testing program. The proposed requirement specifies that the sampling and testing program must be reviewed and revised and/or updated as necessary to reflect changing circumstances. The most recent version

[51] This accounting for the method of extraction would not require disclosure of confidential information.

of the sampling and testing program, or portions thereof, must be provided to the employees who are responsible for implementing it. When the sampling and testing program is updated or revised, all employees responsible for implementing it must be notified and all copies of the sampling and testing program must be maintained as of the date of the most recent revision. If a sampling and testing program is updated, revised or superseded, documentation of the program that was updated, revised, or superseded must be retained for 5 additional years.

Proposed § 173.41(d) would mandate that each person required to develop and implement a sampling and testing program must maintain a copy of the sampling and testing program documentation (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the documentation available upon request, at a reasonable time and location, to an authorized official of DOT.

It should be noted above in early 2014 API created a working group on entitled the ''API Classification & Loading of Crude Oil Work Group.'' The goal of this group was to develop a consensus industry standard (RP 3000) that would address testing and sampling of crude oil. PHMSA personnel have been active participants in these meetings. PHMSA is encouraged by the development of such an industry standard and API's continued work in the standard and beyond to improve the accuracy of classification of materials and the overall safety or operational rail requirements. Once finalized PHMSA may consider adoption of such a standard and in addition those in the regulated community may petition for the incorporation of the standard through the processes outlined in section 106.95 of the HMR.

PHMSA seeks public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

(1.) What are the differences in the process and costs for classification of mined gases compared to mined liquids such as crude oil?

(2.) How much variability exists across a region due to location, time, temperature, or mining methods for gases and liquids?

(3.) Would more or less specificity regarding the components of a sampling and testing program aid offerers of shipments to be in compliance with proposed § 173.41?

(4.) Do the guidelines provides sufficient clarity to offerors to understand whether they are in compliance with these requirements?

(5.) How could PHMSA provide flexibility and relax the sampling and testing requirements for offerors who voluntarily use the safest packaging and equipment replacement standards?

E. Additional Requirements for High-Hazard Flammable Trains

In the September 6, 2013 ANPRM we outlined the additional safety enhancements, which may include both rail car design and rail carrier operational changes that were considered by the T87.6 Task Force, and we provided the public an opportunity to comment. Below are the key considerations of the task force from both a tank car design and operations standpoint.

TABLE 16—KEY CONSIDERATIONS AND FINDINGS OF THE T87.6 TASK FORCE

Tank car design
Thermal protection to address breaches attributable to exposure to fire conditions. Findings—Modeling of tank cars exposed to pool fire conditions using a version of AFFTAC current at the time the TF was active, and using pure ethanol as a surrogate, indicate thermal protection and a jacket was not necessary for a tank car to survive 100 minutes in a pool fire. A pressure relieve valve with a flow capacity of 27,000 SCFM with a start to discharge pressure of 75 psig was needed to ensure the tank car survived 100 minutes.
Roll-over protection to prevent damage to top and bottom fittings and limit stresses transferred from the protection device to the tank shell. Findings—Research comparing the top fittings protection required for the CPC–1232 compliance car and the protection required in the HMR for certain tank cars based on dynamic loads was considered preliminary and not sufficient to base a recommendation.
Hinged and bolted manways to address a common cause of leakage during accidents and Non-Accident Releases (NARS); Findings—Representatives of the shipping community expressed the following concerns regarding the elimination of hinged and bolted manways. • The existing infrastructure at the loading and unloading facilities has been designed make use of the 20″ manway. • Through the manway the facilities recover vapor, inspect the interior of the cars, obtain samples of heels in the tanks, insert a stinger used to dissipate energy of a fluid moving at a high flow rate, gauge the volume in the car during loading, access the car for periodic and ad hoc cleaning. In some cases all of the loading/unloading appurtenances have been incorporated onto a housing that fits over the manway. • If a bolted pressure plate like assembly is required the loaded volume may be determined using existing technology. The specific gravity of crude oil varies from 0.6 to 1.0 limiting the usefulness of a magnetic gauging device. Alternatives to hinged and bolted securement are currently under development and testing.
Bottom outlet valve (BOV) elimination; Findings—The working group concluded elimination of the allowance for BOVs is not a viable option in the near term. The Task Force then considered enhanced protection of the bottom outlet valve. Appendix E of the AAR's Tank Car Specifications provides the standards for bottom discontinuity protection. In order to move forward with this concept, the design criteria will need to be developed. Time constraints prohibit this task force from advancing this concept. Also, inspection of the 10 cars involved in a recent derailment indicates the bottom outlet protection functions as designed and no valve were significantly damaged. AAR TCC created a docket T10.5 and a task force to evaluate bottom outlet performance. Task force T87.6 recommends that the TCC add development of design criteria for enhanced bottom outlet protection to the T10.5 charge. The following are other ideas being investigated by T10.5 that are germane to T87.6. • Shipment of the car without the BOV handle attached and development of a standard/universal handle attachment. • Eliminate use of overly strong handle. • Incorporating operating stops on valve bodies.

TABLE 16—KEY CONSIDERATIONS AND FINDINGS OF THE T87.6 TASK FORCE—Continued

• The working group will also engage BOV manufacturers to determine if valve configurations or design be altered to prevent damage documented in recent derailments.
Increasing outage from 1 percent to 2 percent to improve puncture resistance. Increasing the minimum allowed outage was a difficult option to evaluate because the commodities are loaded below the reference temperature and the outage at the loading temperature is well above the regulatory minimum. It was reported Ethanol was loaded to an outage of approximately 4%. The American Petroleum Institute (API) surveyed a number of its members to learn the outage of ethanol as received. The outages ranged from 2.86% to 6.23%. To further evaluate the benefit of this option, the AFFTAC subgroup performed simulations to determine the benefit (to survivability in a pool fire) offered by increased outage. Based on the results of the simulation a tank car with 2% outage had an insignificant change in performance when exposed to a pool fire.
Rail Carrier Operations
Rail integrity (e.g., broken rails or welds, misaligned track, obstructions, track geometry, etc.) to reduce the number and severity of derailments; Findings—The Task Force urged groups charged with addressing track integrity issues to aggressively work toward a quick and meaningful resolution. In addition, the Task Force urged developers and suppliers of rail flaw detection technology to continue to make the advancement and production of the technologies a priority.
Alternative brake signal propagation systems ECP, DP, and two-way EOT to reduce the number of cars and energy associated with derailments; Findings—Based on the simulation results and analysis of the data it was concluded the alternatives considered provided marginal benefits. Moreover the identified obstacles to implementation represent a considerable time and cost investment and the predicted benefits would not be realized for months or years in the future. As such, this working group will not make a recommendation related to alternative brake signal propagation systems.
Speed restrictions for key trains containing 20 or more loaded tank cars (on August 5, 2013, AAR issued Circular No. OT–55–N addressing this issue); Findings—The working group recommended that OT–55 not be modified due to the adverse impact on cycle times and the resulting increase in the number of tank cars which would be required to transport these commodities in the same time frame. Most of the benefit of the reduced speed restriction is already in place, since five of the seven Class 1 railroads already handle unit trains of these commodities as key trains.
Emergency response to mitigate the risks faced by response and salvage personnel, the impact on the environment, and delays to traffic on the line. Findings—The Task Force supports the RFA's proposed recommendation and in turn, recommends the AAR request updates from the RFA regarding the availability of mobile stores of AR–AFFF.

As part of PHMSA and FRA's systematic approach to rail hazardous materials transportation safety, in this NPRM, in addition to new tank car design standards, PHMSA is proposing operational requirements for HHFTs. Some of these operational requirements are consistent with the T87.6 Task Force and discussed in further detail below.

a. Speed Restriction

Speed is a factor that may contribute to derailments. Speed can influence the probability of an accident, as it may allow for a brake application to stop the train before a collision. Speed also increases the kinetic energy of a train resulting in a greater possibility of the tank cars being punctured in the event of a derailment.

The laws of physics indicate that if an accident occurred at 40 mph instead of 50 we should expect a reduction of kinetic energy of 36%. After consultations with engineers and subject matter experts, we can assume that this would translate to the severity of an accident being reduced by 36%. A slower speed may allow a locomotive engineer to identify a safety problem ahead and stop the train before an accident occurs, which could lead to accident prevention. PHMSA only quantifies benefits in this proposed rule from mitigating the severity of accidents. With respect to prevention, PHMSA notes that reduced speeds will reduce the risk of accidents on net, though some risks could increase under limited circumstances.

PHMSA and FRA used a ten mile speed differential in calculating an effectiveness rate for the 40 mph speed restriction options, which assumes that at the time of an accident trains would be going 10 mph slower if the speed restriction were at 40 mph rather than 50 mph. Braking is often applied before an accident occurs, and the speed differential at the time of an accident that results from trains operating at top speeds of 50 mph and 40 mph could be different than 10 mph. Furthermore, in some cases, other restrictions on speed or congestion could affect speed at the time of the accident. PHMSA lacks a basis to modify the assumption that speeds would be 10 mph different at the time of accidents and seeks comment on how we may better determine how speed restrictions would affect actual speed at the time of an accident.

A simulation program, Train Energy & Dynamics Simulator (TEDS) was used to study the dynamics and energy levels of trains under a variety of operational conditions. Specifically, TEDS was used to determine the stopping distance and the rate of dissipation of kinetic energy (KE) of a generic, 100 tank car train on level tangent track equipped with the candidate brake signal propagation systems. The simulations were used to determine the relative performance of the different systems. The model was validated using brake signal propagation data from Wabtec and data from a BNSF test performed in 2008.

This modeling tool was then used to determine the remaining energy to be dissipated and the speed at selected locations in the train when that tank car reached a defined point specified as the Point of Derailment (POD). By comparing the results for each technology, assumptions were made for the difference in number of cars reaching the point of derailment, remaining kinetic energy of all of the cars in the train at a set time interval, and conditional probability of release (CPR) of the train. This modeling supported the conclusion that a 10 mph speed reduction would reduce the harm of a derailment by 36%.

PHMSA anticipates the reductions in the speed of trains that employ less safe tank cars will prevent fatalities and other injuries, and limit the amount of property damage done in an accident. PHMSA expects fewer safety benefits would be realized from a reduction in speed as the tank car fleet is enhanced as proposed in this NPRM.

As noted above, T87.6 Task Force considered this issue but did not recommend action, primarily because of the ''adverse impact on cycle times and the resulting increase in the number of tank cars which would be required to transport these commodities in the same time frame.''

However, given the increasing risks of HHFTs, in the ANPRM we asked several questions regarding AAR Circular No. OT–55–N. Specifically, we asked if the Circular adequately addressed speed restrictions. The majority of the commenters indicated that the current voluntary 50-mph speed restriction is acceptable. Further, during the industry Call to Action, the rail and crude oil industries agreed to consider further voluntary improvements, including speed restrictions in high consequence areas, similar to the requirements that are established by the routing requirements in Part 172, Subpart I of the HMR. As a result of those efforts, AAR indicates that railroads began operating certain trains at 40 mph on July 1, 2014. This voluntary restriction applies to any HHFT with at least one non-CPC 1232 DOT Specification 111 tank car loaded with crude oil or one non-DOT specification tank car loaded with crude oil while that train travels within the limits of any high-threat urban area (HTUA) as defined by 49 CFR 1580.3.

In their comments, AAR and the ASLRRA stated,

> Following Lac-Mégantic, AAR's and ASLRRA's members reviewed their operating practices with respect to the transportation of hazardous materials. The decision was made to expand OT–55, the industry circular on recommended operating practices, to encompass all hazardous materials, including flammable liquids. OT–55's operating restrictions now apply to trains containing one car of a TIH material, spent nuclear fuel, or high-level radioactive waste or 20 cars of any combination of other hazardous materials. The 20-car threshold was chosen in recognition that in the context of Lac-Mégantic, the concern is over a pool fire involving multiple cars. In addition, crude oil and ethanol typically are shipped in unit trains.

Further, AAR and the ASLRRA stated,

> OT–55 has existed for two decades and has been adhered to by the railroad industry. There is no need to incorporate its provisions into the hazardous materials regulations. With respect to the 50-mph speed limit, that is the regulatory limit for TIH.[52] AAR and ASLRRA are unaware of any analysis justifying a lower speed limit and is concerned that a lower speed limit will have the counterproductive effect of causing shippers to divert freight to other transportation modes.

Proposed § 174.310(a)(4) would establish a 50-mph maximum speed restriction for HHFTs. It was suggested that there is no need to incorporate the speed restrictions of OT–55. OT–55 is a recommended practice and, as such, does not carry the weight of law. A subscribing railroad can, without concern of a penalty, move these trains at speeds exceeding the industry standard and as discussed previously, increase the energy and likelihood of catastrophic damage to tank cars involved in a train accident. Codifying this voluntary commitment will ensure that the benefits of these speed restrictions are realized indefinitely. Without codification of these requirements the speed restrictions could be subsequently lifted prematurely and increase risk. Additionally, in the event that a rail carrier cannot comply with the proposed braking requirements discussed in the Alternative Brake Propagation Systems section of this NPRM, the rail carrier would not be permitted to operate HHFTs at speeds exceeding 30-mph.

Finally, we are proposing three Options for a 40-mph speed restriction for any HHFT unless all tank cars containing flammable liquids meet or exceed the proposed standards for the DOT Specification 117 tank car. We request comments on which Option would have greatest net social benefits and whether the 40-mph speed restriction is necessary. Those 40-mph speed limit options are as follows:

Option 1: 40 mph Speed Limit All Areas

> All HHFTs are limited to a maximum speed of 40 mph, unless all tank cars meet or exceed the proposed performance standards for the DOT Specification 117 tank car.

Option 2: 40 mph in Areas With More Than 100,000 People

> All HHFTs—unless all tank cars containing flammable liquids meet or exceed the proposed standards for the DOT Specification 117 tank car—are limited to a maximum speed of 40 mph while operating in an area that has a population of more than 100,000 people, unless all tank cars meet or exceed the proposed standards for the DOT Specification 117 tank car. An area that has a population of more than 100,000 people would be defined using municipal borders, as determined by census population data. The 40 mph limitation to maximum speed would apply when any part of a HHFT is operating within that municipal border. PHMSA estimates that approximately 10% of the track miles for crude oil and ethanol traffic are traversed in cites with a population greater than 100,000 people. We seek comments on this assumption. Therefore, only 10% of the track miles would be impacted.

Option 3: 40 mph in HTUAs

> All HHFTs—unless all tank cars containing flammable liquids meet or exceed the proposed standards for the DOT Specification 117 tank car—are limited to a maximum speed of 40 mph while the train travels within the limits of HTUAs, unless all tank cars meet or exceed the proposed standards for the DOT Specification 117 tank car. PHMSA estimates that approximately 2% of the track miles for crude oil and ethanol traffic are traversed in HTUAs. We seek comments on this assumption. Therefore, only 2% of the track miles would be affected.

PHMSA has prepared and placed in the docket a RIA addressing the economic impact of this proposed rule. In the RIA we provide an analysis of speed restrictions, including the Options for the 40-mph speed limit. Our analysis has several limitations, which are listed in the RIA. The analysis extrapolates from the geometric characteristics of a single 124-mile subdivision, which may not be representative of crude and ethanol routes. In addition, we do not estimate any effects from speed reductions on other types of rail traffic throughout the rail network (e.g., passenger trains, intermodal freight, and general merchandise).

PHMSA seeks public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

1. What would the effects be of a 40-mph speed limit for HHFTs on other traffic on the network, including passenger and intermodal traffic, under each of the three described Options?

2. PHMSA estimates the value of an hour of train delay to be $500. What are the costs per hour of delayed HHFT traffic, and what are the costs of delays for other types of traffic on the network?

3. PHMSA estimates that a 40-mph speed limit, from 50-mph, will reduce the severity of a HHFT accidents by 36 percent,[53] due to the reduction in kinetic energy by 36 percent. What other factors, in addition to kinetic energy

[52] 49 CFR 174.86(b).

[53] Kinetic energy varies directly with the square of speed (velocity).

changes, would refine the methodology for calculating potential risk reduction?

4. To what extent would a 40-mph speed limit in select areas cause rail traffic to be diverted to other lines, and what are the benefits and costs of this potential diversion?

5. To what extent would a 40-mph speed limit cause rail traffic, particularly intermodal traffic, to be diverted onto truck or other modes of transit as a result of rail delays, and what are the benefits and costs of this potential diversion?

6. How might the extrapolation from the 124-mile subdivision to the entire rail network produce over- or underestimates of the effects of speed restrictions for HHFT routes?

7. What other geographic delineations—in addition to HTUAs and cities with 100,000 people or more—should PHMSA consider as an Option for a 40-mph speed restriction in the absence of a proposed DOT 117 tank car?

8. How would the safety benefits of the proposed speed limits change if combined with the proposed braking systems?

9. What would be the benefits and costs of excluding existing Jacketed CPC–1232 cars from the proposed 40 mph speed restrictions, under each speed Option, if PHMSA selects a more stringent tank car specification than the Enhanced Jacketed CPC–1232?

10. What would be the benefits and costs of limiting the proposed 40 mph speed restrictions, under each Option, only to DOT 111 tank cars carrying a particular hazardous material (e.g., only crude oil)?

b. Alternative Brake Signal Propagation Systems

T87.6 Task Force did not recommend additional braking requirements, stating that based on the simulation results and analysis of the data it was concluded the additional alternatives considered provided marginal benefits. Moreover the identified obstacles to implementation represent a considerable time and cost investment and the predicted benefits would not be realized for months or years in the future. The group did acknowledge that an alternative signal transmission system, such as an intermediate EOT device, may be a promising option.

However, given the increasing risks of HHFTs, in the September 6, 2013 ANPRM we specifically requested comments pertaining to alternative brake signal propagation systems to reduce the number of cars and energy associated with derailments.

ECP (Electronic Controlled Pneumatic brake system) simultaneously sends a braking command to all cars in the train, reducing the time before a car's pneumatic brakes are engaged compared to conventional brakes. The system also permits the train crew to monitor the effectiveness of the brakes on each individual car in the train and provides real-time information on the performance of the entire braking system of the train. ECP brake system technology also reduces the wear and tear on brake system components and can significantly reduce fuel consumption. All cars in a train must be equipped with ECP before a train can operate in ECP brake mode.

DP (Distributed Power) is a system that provides control of a number of locomotives dispersed throughout a train from a controlling locomotive located in the lead position. The system provides control of the rearward locomotives by command signals originating at the lead locomotive and transmitted to the remote (rearward) locomotives. A locomotive located ⅔ of the way through a train consist may be able to produce braking rates for the train that are close to those produced by ECP brakes. The braking rates, however, are more effective when derailments occur at the head of the train rather than closer to the back of the train. Further, T87.6 Task Force found that, in practice, rail carriers intentionally introduce a delay in emergency brake application that negatively affects the overall benefits from enhance signal transmission.

One commenter, API, indicates that DP serves as a means to increase the speed of application of the airbrakes as the braking signal would reach the cars throughout the train more rapidly. Further, API indicates that some railroads have already begun using DP and it serves as the fastest way to send braking signals to all of the cars. In addition, API indicates that accidents resulting from brake failure in one engine could be averted if another engine supports the air brakes on the entire train. API encourages PHMSA to evaluate DP and the development of a mid-train signaling device.

The two-way EOT device includes two pieces of equipment linked by radio that initiate an emergency brake application command from the front unit located in the controlling locomotive, which then activates the emergency air valve at the rear of the train within one second. The rear unit of the device sends an acknowledgment message to the front unit immediately upon receipt of an emergency brake application command. A two way EOT device is more effective than conventional brakes because the rear cars receive the brake command more quickly.

FRA conducted simulations to better understand the effect on energy dissipation and stopping distance of different brake signal propagation systems; conventional brakes, DP configurations, and ECP. The simulations were performed using the TEDS program, developed by Sharma & Associates to study the dynamics and energy levels under a variety of operating conditions. Derailments involving trains equipped with two way EOT devices were not specifically simulated. In simulated derailment speeds of 50 and 60 mph, at approximately the 9th car there is a divergence in the kinetic energy of individual railcars at the point of derailment between ECP, DP (EOT), and conventional brake systems. At those speeds, if a derailment occurs at the first car, changes in the brake signal propagation system will only be realized after the 10th car. At a derailment speed of 40 mph the divergence occurs at the 7th car. The following graphs show the reduction in kinetic energy as a function of train speed and a tank car's position in a train for each of the brake signal propagation systems described above.

Figures 1, 2, 3 and 4 below are based on the following assumptions:

- Each train includes three locomotives at 415,000 lbs., 100 cars at 263,000 lbs., train length 6,164 ft.
- DP has two locomotives at front and one at rear of train.
- DP ⅔ has two locomotives at front of the train, and one placed two thirds from the front.
- Dynamic brakes were assumed to be inactive for the purpose of the 18 percent effectiveness rate of DP, thus it is a fair statement to say DP at the end of the train without the benefit of dynamic brakes is equivalent to EOT. Therefore, for the purposes of our analysis, we assumed EOT is as effective as DP when it is located at the end of the train.[54]

[54] The specifics of this model will be placed in the docket for this rulemaking upon completion. This assumption would tend to underestimate the benefits of ECP brakes, because it enhances the safety level of the estimated baseline.

Figure 1: Kinetic Energy vs. Position in Train at a Derailment Speed of 40 Mph

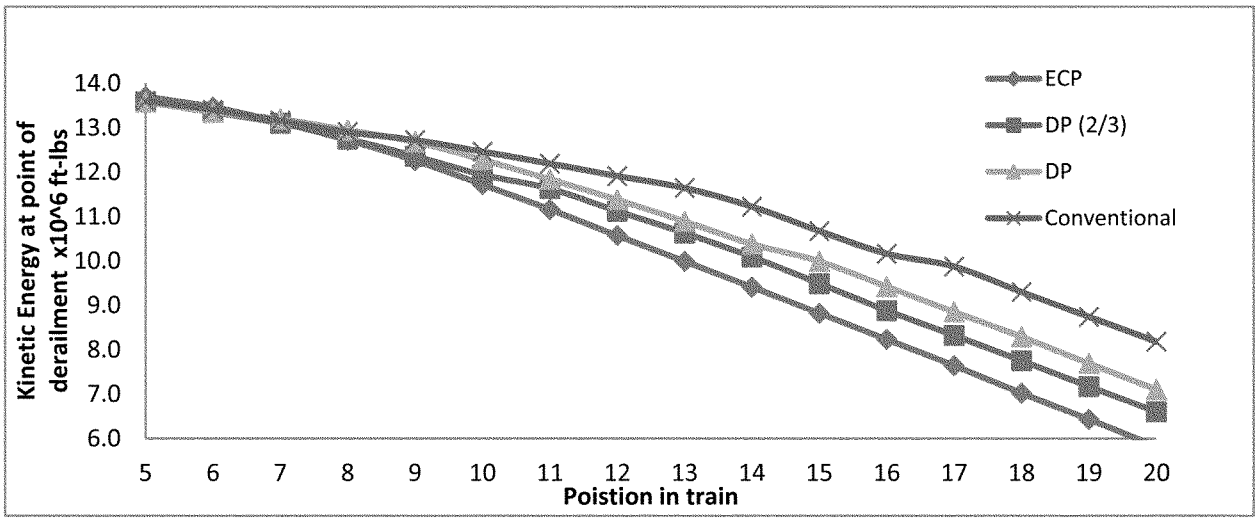


Figure 2: Kinetic Energy vs. Position in Train at a Derailment Speed of 50

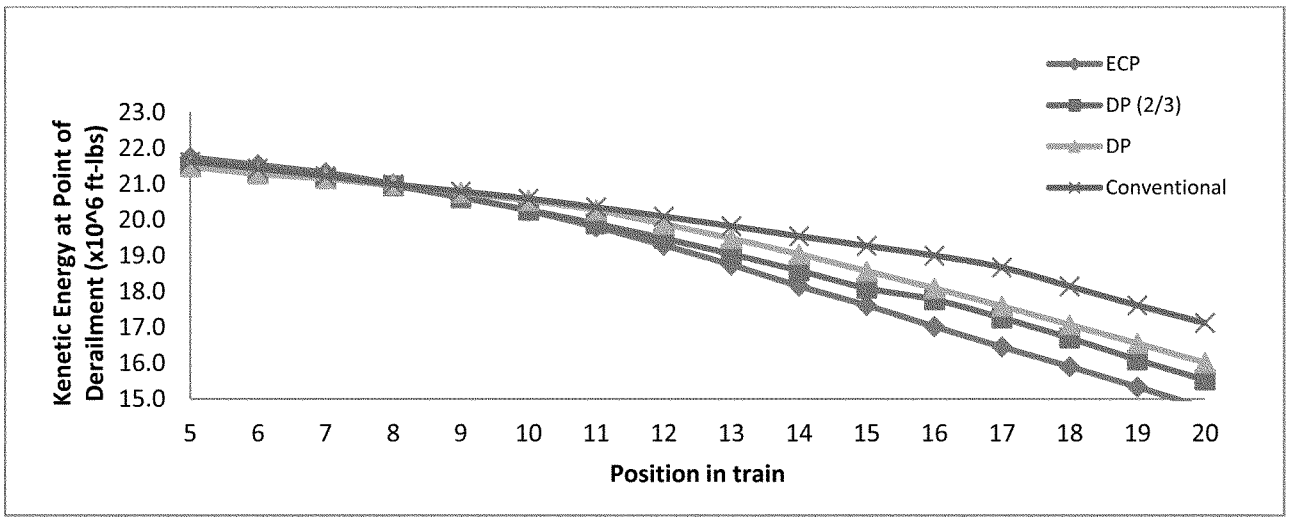
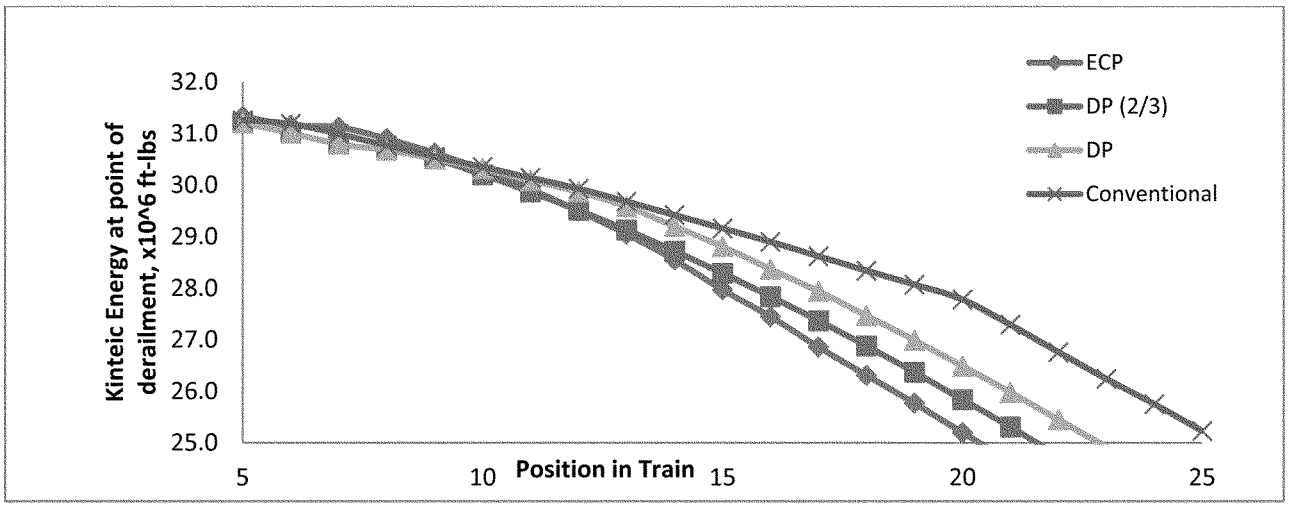
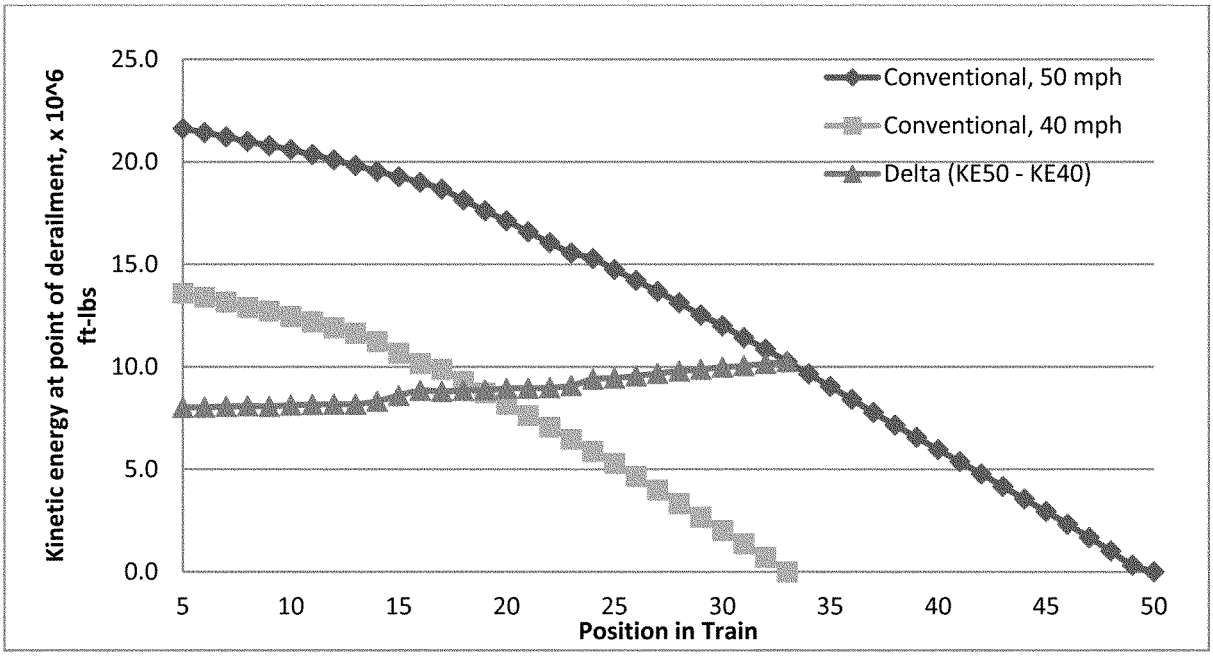


Figure 3: Kinetic Energy vs. Position in Train at a Derailment Speed of 60 mph



The following graph provides the results of a comparison of the simulations of derailments at 40 and 50 mph. The data are the kinetic energy versus position in a train operating with conventional brakes. The trend line of the difference in energy per car is shown. The trend line is relatively flat, but the slope begins to increase slightly after the 15th car. This demonstrates that the slower the initial train speed, the greater the effect of braking on the ability of the train to dissipate energy.

Figure 4: Kinetic Energy vs. Position in Train at Derailment Speeds of 40 and 50 Mph



The results of these simulations suggest that alternative brake signal propagation systems decrease brake signal propagation time relative to the conventional brake system. Specifically, FRA simulations estimated that:

- Using its methodology to evaluate the probability of tank car puncture DOT calculated that a derailment involving a train made up of Option 1 tank cars (equipped with ECP brakes) will result in 36 percent fewer cars puncturing than the same train with conventional brakes. As such DOT estimates that ECP brakes would reduce the severity of a HHFT accident by an estimated 36 percent, compared to conventional brakes.
- Figures 1, 2 and 3 show that the ability for trains operating with two-way EOT device and DP brake systems to dissipate energy is between the abilities of those operating with ECP and conventional brake systems. Accordingly, DOT estimates that two-way EOT or DP would reduce the severity of a HHFT accident by 18 percent (half of the 36% estimated for ECP brakes), compared to conventional brakes.

Based on Sharma's modeling, the effectiveness of ECP was determined to be 36%, and DP was calculated (not simulated) to determine effectiveness of about 18 percent. However, as both DP and EOT effectiveness were calculated based on a number of factors and previous model runs, PHMSA and FRA will place a technical supplement into the rulemaking docket to provide greater detail on the inputs and assumptions underlying the model.

In this NPRM we are proposing to require each HHFT to be equipped with an enhanced brake signal propagation system. We are proposing an implementation schedule that minimizes the impacts on rail carriers. Specifically, subject to one exception, we are proposing to require the following:

- HHFTs to be equipped with a two-way EOT device as defined in 49 CFR 232.5 or a distributed power system as defined in 49 CFR 229.5,, by October 1, 2015.
- After October 1, 2015, a tank car manufactured in accordance with proposed § 179.202 or § 179.202–11 for use in a HHFT must be equipped with ECP brakes.
- After October 1, 2015, HHFTs comprised entirely of tank cars manufactured in accordance with proposed § 179.202 and § 179.202–11 (for Tank Car Option 1. the PHMSA and FRA Designed Car, only), except for required buffer cars, must be operated in ECP brake mode as defined by 49 CFR 232.5.

To reduce the burden on small carriers that may not have the capital available to install new braking systems, we are proposing an exception. If a rail carrier does not comply with the proposed braking requirements above, the carrier may continue to operate HHFTs at speeds not to exceed 30 mph. We will continue to monitor braking performance and may consider other regulatory or non-regulatory actions in the future on restrictions for specific containers or trains.

An ECP brake system permits the train crew to monitor the effectiveness of the brakes on each individual car in the train and provides real-time information on the performance of the entire braking system of the train. ECP brake system technology also reduces the degradation on brake system components and can significantly reduce fuel consumption. Due to these added benefits, we believe that adding ECP brake technology to these captive fleet trains will have greater net social benefits than requiring only DP or EOT devices.

PHMSA seeks public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

1. What is the annual capacity of tank car and locomotive manufacturing and retrofit facilities to install or implement ECP, DP, and EOT systems on the HHFT fleet? To what extent will implementation issues arise?
2. PHMSA estimates that ECP brakes cost $3,000 per new tank car, $5,000 per retrofitted tank car, and $79,000 per locomotive. To what extent do these estimates reflect the market prices for ECP?
3. PHMSA estimates that ECP brakes would reduce accident severity by 36 percent compared to conventional brakes with EOT devices and by 18 percent compared to locomotives with DP or another EOT device. To what extent do other simulation models, besides those used by FRA, or the results of ECP pilot programs validate these results?
4. PHMSA expects that all railroads already have two-way EOT devices, have DP, or operate at speeds lower than 30-mph, so PHMSA estimates no benefits or costs for the 30-mph limit in the absence of advanced braking systems. Do any railroads that operate at speeds greater than 30-mph also not have two-way EOT devices or DP?
5. How would the safety benefits of the proposed braking systems change if combined with the proposed speed limits and tank car standards?

F. New Tank Cars for High-Hazard Flammable Trains

In the September 6, 2013 ANPRM we requested comments pertaining to new construction requirements for DOT Specification 111 tank cars used in flammable liquid service. Though commenters differ on the applicability of a new construction requirement to all flammable liquids, all support prompt action to address new construction of tank cars.

In Recommendation R–12–5, NTSB recommends that we,

> Require that all newly-manufactured and existing general service tank cars authorized for transportation of denatured fuel ethanol and crude oil in PGs I and II have enhanced tank head and shell puncture resistance systems and top fittings protection that exceed existing design requirements for DOT Specification 111 tank cars.

Several commenters requested that PHMSA not adopt standards of construction for newly constructed tank cars beyond those of the CPC–1232. Additionally, most commenters, including API, were strongly against any retrofits of existing tank cars beyond minor modifications. For example, according to API,

> ''There are approximately 15,000 cars built to the CPC–1232 standard currently in flammable liquid service. According to RSI, Approximately 36,000 more cars will be built to the CPC–1232 industry standard for crude oil service by December 2015. The industry has reached consensus on the P–1577 standard for tank cars in crude oil and ethanol service, and it is therefore important to issue regulations on these cars.''

We address retrofits of existing cars in the next section. This section describes requirements for newly constructed tank cars used in HHFT.

In this NPRM, we are proposing three Options for newly manufactured tank cars that will address the risks associated with the rail transportation of Class 3 flammable liquids in HHFTs. Tank cars built to the proposed new standard will be designated ''DOT Specification 117.'' In addition, we are proposing a performance standard for the design and construction of tank cars equivalent to the DOT Specification 117. A tank car that meets the performance criteria will be assigned to ''DOT Specification 117P.'' We propose to require new tank cars constructed after October 1, 2015 that are used to transport Class 3 flammable liquids in HHFT to meet the specification requirements for the DOT Specification 117 tank car or the proposed performance specifications. The proposed performance standard is intended to encourage innovation in the design of tank car, use of new materials, and incorporation of new appurtenances.

In addition, tank car manufacturers have the option to build a DOT Specification 117 tank car, as outlined in the proposed specification requirements. Both the prescribed specifications and the performance standard were developed to provide improved crashworthiness relative to the DOT Specification 111 tank car. In addition to proposing revisions to Part 179 of the HMR to include the DOT Specification 117 and 117P requirements, we are also proposing revisions to the bulk packaging authorizations in §§ 173.241, 173.242, and 173.243 to include the DOT Specification 117 and 117P tank car as an authorized packaging for those hazardous materials, as those sections are referenced in column (8C) of the HMT. We note that, as stated in the introductory text to §§ 173.241, 173.242, and 173.243, each person selecting a

packaging must consider the requirements of subparts A and B of Part 173 of the HMR and any special provisions indicated in column (7) of the HMT.

Finally, we are proposing to incorporate by reference, in § 171.7, Appendix E 10.2.1 of the 2010 version of the AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars). AAR frequently updates the AAR Specifications for Tank Cars. Appendix E provides requirements for top fittings for certain tank car Options provided below.

a. DOT Specification 117—Prescribed Car

PHMSA is proposing several revisions to the HMR that would change the specification requirements for rail tank cars authorized to transport crude oil and ethanol. The changes would stipulate a new tank car performance specification—the DOT Specification 117 tank car—that would be phased in over time depending on the packing group of the flammable liquid. Revising or replacing the current standard for the DOT Specification 111 tank car is not a decision that DOT takes lightly. We seek to ensure that we select the car that will have the greatest net social benefits, with benefits primarily generated from the mitigation of accident severity. We also aware of, and account for, the large economic effects associated with regulatory changes of this scale, as tank cars are a long-term investment. For these reasons, we are proposing three separate DOT Specification 117 Options and requesting comments. The tank car Options being considered in this NPRM are as follows:

Option 1: PHMSA and FRA Designed Car

Option 1 incorporates several enhancements designed to increase puncture resistance; provide thermal protection to survive a 100-minute pool fire; protect top fitting and bottom outlets during a derailment; and improve braking performance. Among the proposed tank car designs, Option 1 would minimize the consequences of a derailment of tank cars carrying crude oil or ethanol. There would be fewer car punctures, fewer releases from the service equipment (top and bottom fittings), and delayed release of flammable liquid from the tank cars through the pressure relief devices. The proposed enhancements are outlined in detail below:

Key features of this tank car Option include the following:

- 286,000 lb. GRL tank car that is designed and constructed in accordance with AAR Standard 286;
- Wall thickness after forming of the tank shell and heads must be a minimum of 9/16 inch constructed from TC–128 Grade B, normalized steel;
- Thermal protection system in accordance with § 179.18, including a reclosing pressure relief device;
- Minimum 11-gauge jacket constructed from A1011 steel or equivalent. The jacket must be weather-tight as required in § 179.200–4;
- Full-height, 1/2 inch thick head shield meeting the requirements of § 179.16(c)(1);
- Bottom outlet handle removed or designed to prevent unintended actuation during a train accident; and
- ECP brakes.

Under Option 1, the DOT Specification 117 tank car would be equipped with a top fittings protection system and nozzle capable of sustaining, without failure, a rollover accident at a speed of 9 mph, in which the rolling protective housing strikes a stationary surface assumed to be flat, level, and rigid and the speed is determined as a linear velocity, measured at the geometric center of the loaded tank car as a transverse vector.

For Option 1, PHMSA estimates that the roll-over protection and increased extra 1⁄8 inch of shell thickness would reduce crude oil and ethanol accident severity by 10 percent relative to a new tank car that would be constructed in the absence of this rule. Further, PHMSA estimates that ECP brakes would reduce accident severity by 36 percent compared to conventional brakes and 18 percent when compared to for EOT devices or DP. PHMSA estimates that the addition of ECP brakes, roll-over protection, and increased shell thickness would together add $5,000 to the cost of a new tank car that would be constructed in the absence of this rule.

Option 2: AAR 2014 Recommended Car

Option 2 is based on the AAR's recommended new tank car standard, approximately 5,000 of which have been ordered by BNSF Rail Corporation. On March 9, 2011 AAR submitted a petition for rulemaking P–1577, which was discussed in the ANPRM. In response to the ANPRM, on November 15, 2013, AAR and ASLRAA submitted as a comment [55] provide their recommendations for tank car standards that are enhanced beyond the design in P–1577. Notable upgrades from AAR's initial petition include increased shell thickness, jackets, thermal protection full-height head shields instead of half-height head shields for jacketed cars, top fittings protections, and bottom outlet handles that will not open in a derailment.

The Option 2 car has most of the same safety features as the Option 1 car, including the same increase in shell thickness, jacket requirement, thermal protection requirement, and head shield requirement, but it lacks rollover protection and the ECP brake equipment. Installation of ECP brake equipment largely makes up the cost differential between the Option 1 and 2 cars, and the differences in estimated effectiveness are also largely a result of ECP brakes. In essence, examining these cars side by side in the following analysis provides a de facto comparison of the costs and benefits of equipping high hazard flammable trains with ECP braking.

For Option 2, FRA estimates that the extra 1⁄8 inch of shell thickness would reduce crude oil and ethanol accident severity by 10 percent relative to the new car that would be constructed in the absence of this rule. PHMSA estimates that the increased thickness would add $2,000 to the cost of a new tank car that would be constructed in the absence of this rule.

Option 3: Enhanced Jacketed CPC–1232

Option 3 is an enhanced jacketed CPC–1232 tank car standard. This Option would modify the CPC–1232 standard by requiring improvements to the bottom outlet handle and pressure relief valve. It would also remove options (1) to build a car with weaker steel type but with added shell thickness or (2) to build a car with a thicker shell but no jacket. This standard is the car configuration PHMSA believes will be built for HHFT service in absence of regulation, based on commitments from one of the largest rail car manufacturers/leasers—Greenbrier, Inc. and the Railway Supply Institute.[56] This car is a substantial safety improvement over the current DOT Specification 111 but does not achieve the same level of safety as the Option 1 or Option 2 cars. This tank car has a 7/16 inch shell, which is thinner than Option 1 or Option 2 tank cars. Similar to the Option 2 car, this car lacks rollover protection and ECP brake

[55] See *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-0090.*

[56] Greenbrier: *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-0155.* RSI: *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-0156.*

equipment. Because PHMSA assumes that Option 3 is the car that would be built in the absence of this rule, it estimates no costs or benefits from Option 3 for new cars.

All of the Options provided above are designed to address the survivability of the tank car and would mitigate the damages of rail accidents better than the current DOT Specification 111. Specifically, the tank car Options incorporate several enhancements to increase puncture resistance; provide thermal protection to survive a 100-minute pool fire; and protect top fitting and bottom outlets during a derailment. Under all Options, the proposed system of design enhancements would reduce the consequences of a derailment of tank cars carrying crude oil or ethanol. There would be fewer car punctures, fewer releases from the service equipment (top and bottom fittings), and delayed release of flammable liquid from the tank cars through the pressure relief devices.

• Table 2 summarizes the safety features of the DOT Specification 117 tank car Options proposed in this rule. Note that the proposed Options differ on shell thickness, top fittings, and braking.

Table 17 summarizes the effectiveness of the proposed elements of each option. The effectiveness was calculated using the following assumptions:

• PHMSA examined the 13 accidents provided in Table 3 to arrive at its effectiveness rates. This subset of 13 accidents used to calculate effectiveness rates may not be representative of all 40 mainline accidents, from 2006 to present, for trains carrying crude oil and ethanol. (see Appendix B of the RIA for a complete listing of the 40 mainline train accidents during this timeframe). However, PHMSA uses this subset because the data has been verified and demonstrative of HHFT risk.

• DOT Specification 111 tank cars composed the vast majority of the type of tank cars involved in the derailments listed in Table 3. The type of damages these tank cars experienced were used to design the tank car options proposed in the NPRM.

• The volume of lading lost from each tank car in the derailments indicated in Table 3 compiled relative to the documented damage to each tank car that lost lading. These values were used as the baseline for tank car constructed to the current DOT 111 specification.

• Improvement in performance was based on the following assumptions.

○ The ratio of puncture force (DOT111/option) was used as a multiplier to determine the reduction in lading loss.

○ Thermal protection prevented thermal damage that results in loss of containment.

○ Top fittings protection halves the damage to service equipment.

○ BOV modification prevents lading loss through valve.

• The reduced volume of lost lading relative to each enhancement was compared to the baseline to calculate respective reduction or effectiveness.

PHMSA will place into the docket for this rulemaking a more detailed technical supplement that describes the baseline accidents, model inputs, and assumptions that were used to develop the effectiveness rates for each tank car option). For a detailed discussion of these safety features, please refer to Section F. *New Tank Cars for High-Hazard Flammable Trains.*

TABLE 17—EFFECTIVENESS OF NEWLY CONSTRUCTED TANK CAR OPTIONS RELATIVE TO THE NON-JACKETED DOT111 SPECIFICATION TANK CAR

Tank car	Total (%)	Head puncture (%)	Shell puncture (%)	Thermal damage (%)	Top fittings (%)	BOV (%)
Option 1	55	21	17	12	4	<1
Option 2	51.3	21	17	12	1.3	<1
Option 3	41.3	19	9	12	1.3	0

*The top fitting protection for the DOT117 is based on the load conditions described in 179.102–3. The top fittings protection for the BNSF and CPC–1232 car meet the load conditions in M–1002 Appendix E, 10.2. The former is a dynamic load and the latter is a static load. Modeling indicates the stresses imparted in the tank shell during the dynamic loads is three time those encountered during the static load. Therefore, DOT assumes the effectiveness of top fittings for the DOT 117 is 3 times that of the BNSF tank car.

PHMSA will place into the docket for this rulemaking a technical supplement that describes the model inputs and assumptions that were used to develop the effectiveness rates in table 17.

Puncture Resistance

Shell and head punctures are the failure modes that result in rapid and often complete loss of tank contents. A HFFT poses a greater increase risk resulting from puncture due to the volatility of the lading. Minimizing the number of cars punctured in a derailment is critical because flammable liquids, if ignited, can quickly affect the containment of adjacent cars. For example, a derailment in Columbus, Ohio in July 2012 involved 17 freight cars, three of which were tank cars containing ethanol. One of the tank cars was punctured, releasing ethanol, and a fire ensued. Two adjacent tank cars also carrying ethanol were exposed to the fire for an extended period of time. Both cars experienced a thermal tear, resulting in a release of product and a fire ball. In many cases, tank cars of flammable liquid exposed to pool fire conditions experience significant pressure rise. When the pressure relief valve actuates to prevent an energetic failure of the tank car, it discharges flammable liquid, prolonging the fire.

Shell Puncture

PHMSA examined data collected by both PHMSA and FRA for information on derailments involving crude oil and ethanol. For the purposes of this analysis PHMSA focused on main line train derailments beginning in 2006 and forward. We focused on this date range due to the apparent increase in both the frequency and severity of derailments. PHMSA believes that this recent trend is a result of increased use of HHFTs to transport flammable material and we believe this trend will continue. In reviewing the incidents in table 3, shell puncture is the most common train accident damage that results in loss of lading. A number of strategies exist to improve puncture resistance of a tank car, including using higher strength and tougher steel and increasing the thickness of the shell and head of the tank. Tougher steel absorbs more energy by deforming. Thickness of the tank shell/head can be increased and/or a jacket can be added to the design.

DOT is considering both of these strategies. While the shells and heads of DOT Specification 111 and the CPC–1232 standard can be constructed of A516–70 steel, all tank car design standard Options in this proposed rule would require normalized TC–128 steel

because of its superior strength and toughness. Further, the head and shells of DOT Specification 111 and the CPC–1232 standards are 7/16 inch thick (not including the jacket). Options 1 and 2 propose to require DOT Specification 117 tank car head and shells be a minimum of 9/16 inch thick.

Please note that current regulations do not require a jacket. This rule requires an 11-gauge steel jacket. PHMSA expects all new tank cars to have jackets in the absence of this rule, so we do not expect any benefits or costs from this change.

Using the analytical method developed by E.I. DuPont de Nemours and validated through testing performed at the Transportation Technology Center in Pueblo, CO, available for review in the public docket for this rulemaking, FRA calculated the shell puncture resistance of all three Options compared to the DOT Specification 111 tank car.[57]

The proposed materials, minimum thickness of 9/16 inch, and jacket provide a 68 percent improvement in the puncture force for Options 1 and 2 relative to the current specification requirements for a DOT Specification 111 tank car. This translates to a 17 percent effectiveness rate. A tank car constructed to the proposed requirements of Option 3, would have a 35 percent improvement in puncture force relative to the current DOT Specification 111 tank car.[58] This translates into a 9 percent effectiveness rate.

In addition, PHMSA and FRA do not expect the increased thickness, combined with a full-height head shield and a jacket, in Options 1 and 2 to decrease new tank car capacity. The T87.6 Task Force, in considering increased thickness and jacket recommendations, stated that the increased weight per car ''results in a decrease in the capacity of the tank and a commensurate increase in the number of shipments required to meet customer demand. Additional shipments would result in an increase in the number of tank cars derailed.'' However, for the reasons mentioned in the section ''Effects of Increased Weight'' below, PHMSA does not expect that these requirements will cause fully loaded tank cars to exceed 286,000 GRL.

1b. Head Puncture

Puncture resistance of the tank head is another important consideration. Table 3 above highlights this risk of HHFTs by summarizing the impacts of major train accidents involving trains of crude oil and ethanol. Derailment data from table 3 indicates that approximately 30 percent of ethanol and crude oil tank cars experienced punctures in their heads. Of the punctured heads, approximately 38 percent occurred in the top half, and 62 percent occurred in the bottom half of the head.

Tank head puncture resistance has been the subject of a number of previous rulemakings. On July 23, 1974, DOT's Hazardous Materials Regulations Board published a final rule HM–109 (39 FR 27572) that established requirements for head shields in the HMR at § 179.100–23. The requirements were for half height head shields (on non-jacketed pressure cars) with specific minimum dimensions, and performance requirements defined by the AAR impact test. The requirements were based on three studies that indicate half height head shields were between 50 percent and 77 percent effective.

On May 26, 1976, DOT's Materials Transportation Bureau published a final rule under Docket HM–109 (41 FR 21475) that adopted minor amendments to the head shield requirements.

On September 15, 1977, DOT's Materials Transportation Bureau published a final rule under Docket HM–144 (42 FR 46306) that introduced § 179.105–5 Tank Head Puncture requirements, which included performance standards and test requirements. Coupler restraint and thermal protection systems were also included. Half height head shields were not precluded from use as long as they met the requirements in § 179.100–23.

On September 21, 1995, DOT's RSPA published a final rule under Dockets HM–201 and HM–175A (60 FR 49048) that introduced the current § 179.16 and removed §§ 179.100–23 and 179.105–5. The new requirements applied to tank cars transporting all Class 2 materials. In the preamble of the rule PHMSA stated ''research demonstrates that puncture resistance is an inter-related function of head thickness, insulation thickness, and jacket thickness, and the concept of head protection must include more than just traditional (half-height) head shields.'' DOT maintains this position and, accordingly, is proposing all Options for the DOT Specification 117 tank car with a jacket and ½ inch thick full height head shields.

The combination of the shell thickness and head shield of Options 1 and 2 provide a head puncture resistance velocity of 18.4 mph (21% effectiveness rate). Because the Option 3 tank car has a 7/16 inch shell, as opposed to the 9/16 inch shell in Options 1 and 2, it has a head puncture resistance velocity of 17.8 mph.

The results of this modeling are described in Table 18.

TABLE 18—SHELL AND HEAD PUNCTURE VELOCITIES BY TANK CAR OPTION

Tank car	Shell puncture velocity (improvement relative to DOT111 non-jacketed)	Head puncture velocity (improvement relative to DOT111 non-jacketed)
Option 1	12.3 mph (66%)	18.4 mph (114%).
Option 2	12.3 mph (66%)	18.4 mph (114%).
Option 3	9.6 mph (30%)	17.8 mph (107).
CPC–1232 unjacketed	8.5 mph (15%)	Top—10.3 (20%). Bottom—17.6 (105%).
DOT–111 jacketed	9.3 mph (26%)	11.6 mph (35%).

Thermal Protection System

In train accidents listed in Table 3 above, approximately 10 percent of tank car breaches were attributed to exposure to fire conditions. It is worth distinguishing between insulation and thermal protection. Insulation is intended to keep lading at or near a desired temperature during

[57] ''Detailed Puncture Analyses Tank Cars: Analysis of Different Impactor Threats and Impact Conditions'' can be found at: *http://www.fra.dot.gov/eLib/details/L04420.*

[58] Modeling and simulation of puncture velocity indicate a puncture velocity of approximately 7.4 mph for a legacy DOT Specification 111; 9.6 mph for Option 3; and 12.3 mph for the cars under Options 1 and 2. Puncture velocity is based on an impact with a rigid 12″ × 12″ indenter with a weight of 297,000 pounds.

transportation. Insulation is ineffective at temperatures exceeding 350 °F because it disintegrates into a powder. Thermal protection is intended to limit the heat flux into the lading when exposed to fire. Thermal protection will survive for a certain period of time in pool fire conditions. Thermal protection will prevent rapid temperature increase of the lading and commensurate increase in vapor pressure in the tank. This limits the volume of material evacuated through the pressure relieve valve and dangerous over pressurization of the tank.

All DOT Specification 117 options in this NPRM require a thermal protection system sufficient to meet the performance standard of § 179.18, and which must include a reclosing pressure release valve. Section 179.18 requires that a thermal protection system be capable of preventing the release of any lading within the tank car, except release through the pressure release device, when subjected to a pool fire for 100 minutes and a torch fire for 30 minutes. Typically, tank cars with thermal protection are equipped with a weather-tight 11-gauge jacket. Intumescent materials, which do not require a jacket, are infrequently used because of high maintenance costs. The jacket provides the necessary protection by shielding the radiated heat to the commodity tank.

Consistent with current minimum industry standards and Federal regulations for pressure cars for Class 2 materials, the T87.6 Task Force agreed that a survivability time of 100-minutes in a pool fire should be used as a benchmark for adequate performance in this proposed rule. The 100-minute survival time is the existing performance standard for pressure tank cars equipped with a thermal protection system and was established to provide emergency responders with adequate time to assess a derailment, establish perimeters, and evacuate the public as needed, while also giving time to vent the hazardous material from the tank and prevent an energetic failure of the tank car.

The Analysis of Fire Effects on Tank Cars (AFFTAC) [59] was used to evaluate the relative performance of tank cars equipped with different thermal protection systems. The analysis simulated tank cars of varied configurations (jackets and non-jacketed) and positions (rolled over at different angles) exposed to pool and torch fires meeting the requirements in the In evaluating the performance of the thermal protection systems in the simulations, the T87.6 Task Force considered the amount of material remaining in the tank at the time of breach, rather than survival time, to be the best metric of the potential for energetic rupture. The Task Force came to this conclusion because research shows that there is a direct relationship between this amount and the energy of the tank failure [60] and, as with any simulation, there are uncertainties in the absolute survival time estimates. Under all simulation conditions and all thermal protection systems, when the tank failed all of the lading had been vaporized. That indicates that there would be little energy remaining in the tank to produce an energetic rupture at the time of breach. Moreover, the thermal protection prolonged the survivability of the tank by delaying the moment where pressure in the tank exceeded the start to discharge of the pressure relief valve, thus delaying the unintended release of flammable liquid. Because all the thermal protection systems meeting the § 179.18 performance standard that PHMSA studied performed equally well in the simulations, and because the simulations indicated the importance of a pressure relief valve, PHMSA is not requiring a particular system, but instead is requiring that a thermal protection system meet the performance standard of § 179.18 and include a reclosing pressure relief device.

Top Fittings Protection

The top fitting protection consists of a structure designed to prevent damage to the tank car service equipment under specified loading conditions. For the DOT Specification 117 is based on the load conditions described in 179.102–3. The top fittings protection for the BNSF and CPC–1232 car meet the load conditions in M–1002 Appendix E, 10.2. The former is a dynamic load and the latter is a static load. Damage to top fittings can occur when a tank car rolls-over and the equipment strikes the ground or another tank car or is stuck by another car. The specification requirements must consider all of these potential causes of damage to prevent loss of containment. The volume of releases from top fittings is a fraction, typically less than 5 percent of the volume of releases from tank shell and head punctures. Nonetheless, top fittings represent 25 percent of the documented damage to tank cars in recent train accidents. A unique issue with derailments of tank car containing flammable liquids is that ignited lading from a single car can initiate a domino effect of heating an adjacent car(s) which will expels flammable liquid from the PRV that fuels the existing fire and effect additional cars. Preventing the release of flammable liquids in a derailment, regardless of the volume that is lost from a specific source, reduces risk to public health and the environment.

The T87.6 Task Force considered three options related to top fittings with the dual purpose of improved crashworthiness and reduction of NARs: Removal of vacuum relief valves (VRVs), elimination of hinged and bolted manways, and roll-over protection.

VRVs, if operated properly, are an important feature of the tank car's service equipment as they provide an additional safeguard against implosion of tank cars that are filled with elevated temperature material or are cleaned with steam or hot liquid. Tank cars are offered with VRVs as standard equipment. They are often misused by personnel at the loading or unloading facilities and used as venting equipment during normal operations (tank cars are typically equipped with air valves that are designed and intended for repeated opening and losing for loading and unloading operations. The VRV is an emergency device to function in only particular circumstances. As a result of misuse VRV are a common source of non-accident releases. The task force evaluated whether VRVs should be prohibited from application to all DOT Specification 111 tank cars.

Hinged and bolted manways are a closure on manways of general purpose tank cars (DOT Specification 111). The hinge and bolted design permits repeated opening and closing for loading and unloading, and inspection. Proper securement of hinged and bolted manways is sensitive to the size and condition of sealing surface, the type of gasket, condition of bolts and torque procedure. Unless all these factors are considered when securing a tank car for transportation a release of lading will occur resulting from the sloshing of the liquid in transportation. In derailment conditions, if the manway cover is not damaged by impact, leaks are often encountered in car rolled-over on their side. Accordingly, the T87.6 Task Force evaluated the elimination of hinged and bolted manways. For example, five

[59] Information regarding AFFTAC can be found at the following link. *http://www.srconsult.com/AFFTACInfo.htm.*

[60] ''Fire Tests of Propane Tanks to Study BLEVEs [Boiling Liquid Expanding Vapor Explosions] and Other Thermal Ruptures: Detailed Analysis of Medium Scale Test Results'', Department of Mechanical Engineering, Queen's University, Kingston, Ontario, Nov. 1997. Online link to study and research: *http://me.queensu.ca/People/Birk/Research/ThermalHazards/.*

hinged and bolted manways were damaged (creating a leak point) in the Arcadia, OH derailment. The damages included a shattered manway cover and sheared bolts. In addition, hinged and bolted manways account for nearly 30 percent of all NARS. Representatives of the shipping community expressed several concerns regarding the elimination of hinged and bolted manways, including infrastructure issues. The infrastructure at many loading facilities is set up with a system that seats on the manways and include a stinger to deliver the lading as well as vapor recovery. In addition, the loading facilities often use the manways as a means to inspect the gage bar to determine the outage, inspect the condition of the siphon pipe, interior of the tank shell or an interior coating. Alternatives to hinged and bolted securement are currently under development and testing. This option is not being considered for regulatory action at this time because the burden on the shipping community may be reduced if alternatives are available at the time of regulation.

As proposed, only the Option 1 tank car must be equipped with protective structure capable of sustaining, without failure, a rollover accident at a speed of 9 mph, in which the structure strikes a stationary surface assumed to be flat, level, and rigid and the speed is determined as a linear velocity, measured at the geometric center of the loaded tank car as a transverse vector. Failure is deemed to occur when the deformed protective housing contacts any of the service equipment or when the tank retention capability is compromised.

For Options 2 and 3, newly constructed tank cars would require top fittings consistent with the AAR's specification for Tank Cars, M–1002, Appendix E, paragraph 10.2. The top fittings protection design requirements are for static loads. The rollover protection performance requirement prescribed in the HMR is for a dynamic load. The resultant stresses in a protective housing and tank from the dynamic load exceed those from the static loads by a factor of three based on a study by Sharma & Associates [61] comparing the performance of the different systems under both the static requirements of top fittings protection and dynamic conditions of roll-over protection. The industry was concerned that a 7/16 inch thick shell could not withstand the stresses imparted by a roll-over protection structure. This concern remains. However, there is general agreement that a tank car constructed of 9/16 inch steel is capable of withstanding the stresses during a roll-over event. As such, a protective structures meeting the rollover protection performance standard will offer protection of the top fittings superior to that of a structure meeting the static load requirements.

Bottom Outlet Protection

The bottom outlet protection ensures that the bottom outlet valve does not open during a train accident. The NTSB recommended that PHMSA require all bottom outlet valves used on newly-manufactured and existing non-pressure tank cars are designed to remain closed during accidents in which the valve and operating handle are subjected to impact forces. The proposed requirements for all DOT Specification 117 Options in this NPRM require the bottom outlet handle to be removed or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

The T87.6 Task Force considered elimination of BOVs. Representatives of the shipping community expressed the following concerns regarding this idea:

- BOVs are a valued feature of the tank car for the shipping community. The BOV is used to unload, and in some cases, load the tank cars.
- The BOV is necessary when the car is cleaned to drain the rinse liquid.
- Eliminating the allowance for BOV will require major alterations of existing infrastructure of loading and unloading facilities.

Therefore, the AAR TCC created a docket T10.5 and a task force to evaluate bottom outlet performance. The task force considered the following ideas:

- Shipment of the car without the BOV handle attached and development of a standard/universal handle attachment.
- Eliminating use of an overly strong handle.
- Incorporating operating stops on valve bodies.

In addition to the AAR TCC, recommendations, PHMSA also received NTSB Recommendation R–12–6. This recommendation requests that PHMSA require all bottom outlet valves used on newly-manufactured and existing non-pressure tank cars be designed to remain closed during accidents where the valve and operating handle are subjected to impact forces.

PHMSA has considered the loading and unloading concerns of offerors regarding the removal of the bottom outlet valve entirely. Therefore, PHMSA is not proposing to eliminate the BOV entirely. Instead, PHMSA is proposing that on cars with bottom outlet valves, the bottom outlet handle be removed or be designed to prevent unintended actuation during train accident scenarios. For example, this requirement could be met simply by removing the handle during transportation or redesigning bottom outlet configurations (i.e. recessed valving).

Effects of Increased Weight

The additional safety features of the proposed new tank car standard could increase the weight of an unloaded tank car. For instance, all proposed Options for the DOT Specification 117 car include head shields, a jacket, thicker tank shell steel, and other safety features not required in DOT Specification 111 tank cars. Additional weight for the tank car could lead to a reduction in lading capacity per tank car, as rail cars must be under the applicable gross rail weight (GRL) when fully loaded. However, PHMSA and FRA believe there will not be less capacity in practice, for the following reasons:

- PHMSA is proposing a performance standard and expects that the regulations will spur innovation in tank car design and construction. Industry is currently evaluating new, tougher steels as well as composite materials and crash energy management systems intended to improve energy absorption with little or no weight penalty. Innovation will be driven by a desire to decrease the tare weight of the tank car. Assuming the market will be interested if the new materials will restore the pre-DOT Specification 117 tare weight and cost no more than the materials in the DOT Specification 117, the reduction will be at least 9%. This decrease in the tare weight will increase the load limit (carrying capacity) of the car by 9% without increasing material cost.
- When considering risk associated with decreased tank car load limit it is the number of trains and derailment rate that is relevant. DOT believes the railroads will optimize unit train length which may result in longer trains. Optimization will be based on a number of factors including train length, available horse power, grade along route, required speed, loading rack capacity and loop size. Because there are so many variables it is difficult to predict the change in operations resulting from a potential decrease in load limit. As such, DOT is seeking comment on the issue.
- The DOT 117 is authorized to operate at a GRL of 286,000 lbs. The regulations currently authorize the DOT 111 to operate at a GRL of 263,000 lbs.

[61] The studies (Phase I and Phase II) can be found on the e-Library of the FRA Web site at: *http://www.fra.dot.gov/eLib/details/L02545.*

However, DOT 111 tank cars that meet the minimum standards provided in FRA's **Federal Register** Notice of January 25, 2011 [62] are permitted to operate at a GRL of up to 286,000 lbs. The proposed tank car specifications meet those minimum requirements and PHMSA and FRA believe that the additional weight of the safety features will be accommodated by the increase in allowable GRL and will not decrease the load limit (or innage) as indicated in the table below. For example, a jacketed CPC1232 can be loaded to 1% outage and not weigh 286,000 pounds (approximately 281,000 pound) and as such, there is no capacity gain to be had unless the allowable GRL is increased beyond 286,000.

- Bridge capacity along the routes limits the GRL of a particular railroad or segment of rail. The primary concern for this issue is the terminal railroads. DOT believes all of the Class I RRs are capable of 286,000. The ASLRRA, Web site indicates that nearly half of its member railroads are capable of moving tank cars with a gross rail load of 286,000. There is very little specific information provided and perhaps a RR has a trestle on a line not capable of handling a 286,000 car that would not necessarily affect the delivery of crude oil to a customer because the trestle exists beyond the delivery point. DOT is requesting information from industry that will provide a better understanding of the capacity of the terminal railroads.

The capacity of candidate tank cars are as follows:

Tank car characteristics	Gross rail load	Tare weight	Ethanol capacity (6.58 lbs./gallon)	Crude oil capacity (6.78 lbs./gallon)	Total weight of tank car (ethanol)	Total weight of tank car (crude)
DOT 111 specification non-jacketed	263,000	67,800	29,666	28,790	263,000	263,000
	286,000	67,800	29,700	29,700	233,226	269,166
DOT111/CPC1232 non jacketed	263,000	75,200	28,540	27,699	263,000	263,000
	286,000	75,200	29,700	29,700	270,626	276,566
DOT111/CPC1232 jacketed	263,000	80,800	27,690	26,873	263,000	263,000
	286,000	80,800	29,700	29,700	276,226	282,166
FRA and PHMSA designed car (Option 1)	263,000	85,500	26,976	26,180	263,002	263,000
	286,000	85,500	29,700	29,572	280,926	286,000

*29,700 gallons is the minimum allowable outage (1%) on a 30,000 gallon capacity car.

Note: For cars operating at a gross rail load of 286,000 pounds there is no loss of capacity.

Note: If limited to 263,000 pound gross rail load, all cars except the legacy DOT Specification 111 will have a lower capacity. The DOT Specification 117 represents a larger decrease in capacity than the DOT Specification 111/CPC–1232 jacketed.

As a result, we do not expect more, or longer, trains being offered into transportation as a result of any tank car requirement options in this proposal. We request comments on our rationale and conclusion that there will be no reduction in tank car capacity.

PHMSA seeks public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

1. PHMSA expects that all new tank cars put into in crude oil and ethanol service would, in the absence of this rule, have jacket, thermal protection, TC–128 Grade B normalized steel, full height head shield, enhanced top fittings protection, and bottom outlet valve reconfigurations. Would any new crude oil or ethanol tank cars, manufactured in 2015 and beyond, not have all of these features? If so, please provide specific data on missing features and the numbers of cars in each category.

2. For the reasons listed above, PHMSA estimates no decrease in tank car capacity from the increased weight of Options 1 and 2. However, some commenters on the ANPRM suggested otherwise. PHMSA solicits data and other relevant information in order to be able to fully evaluate such claims. To the extent that commenters believe tank car capacity would be adversely affected, PHMSA seeks information on the benefits and costs of any such effects or of industry responses (such as developing innovative materials) to respond to capacity reduction/weight increases.

3. Would the increased size and weight of the tank car Options have any other effects not discussed in the NPRM or accompanying RIA? To what extent would they affect braking effectiveness? To what extent would they affect track safety performance? To what extent would they affect loading practices?

4. What additional safety features not discussed here, if any, should PHMSA consider? If so, please provide detailed estimates on the costs and benefits of individual safety features.

5. Do any of the safety features included in any of the Options have costs that are likely to exceed benefits? If so, please provide detailed estimates on the costs and benefits of individual safety features.

6. As noted above, PHMSA estimates that that the $\frac{1}{8}$ inch thickness would provide an 9 percent reduction in accident severity and would cost $2,000. To what extent does the risk reduction align with the findings of other tank car effectiveness studies? To what extent does this cost estimate reflect market prices?

7. For Option 1, PHMSA expects the upgrade to roll-over protection can be made at almost no cost. To what extent does this cost estimate reflect market prices?

8. What would be the benefits and costs of allowing CPC–1232 cars ordered before October 1, 2015 to be placed into service for their useful life? What, if any, additional safety features should be required for these cars during their useful lives?

b. DOT Specification 117—Performance Standard

In this NPRM, we propose to require a tank car that is constructed after October 1, 2015 and used to transport ethanol or crude oil or used in a HHFT, to either meet the proposed DOT Specification 117 design requirements or the performance criteria. Under this proposal, a car manufactured to the

[62] This FR Notice required compliance with AAR standard S286. AAR Standard S–286 applied to four axel freight cars designed and designated to carry a gross rail load of greater than 268,000 pounds and up to 286,000 pounds. The standard includes requirements for car body design loads, fatigue design, brake systems. Bearings, axels, wheels, draft system, springs, trucks, and stenciling.

performance standard must be approved in accordance with § 179.13(a) and must incorporate several enhancements to increase puncture resistance; provide thermal protection to survive a 100-minute pool fire; and protect top fitting and bottom outlets during a train accident. The proposed performance standard is intended to encourage innovation in tank car designs, including materials of construction and tank car protection features, while providing an equivalent level of safety as the DOT Specification 117. Tank car manufacturers would be allowed to develop alternative designs provided they comply with the performance requirements. Under the proposal, such a design, for example, may incorporate materials of construction that increase puncture resistance but reduce the tank weight, increasing the amount of product in a tank and reducing the number of shipments required to move the same amount of hazardous materials.

A tank car that meets the performance requirements, if adopted, will be assigned to ''DOT Specification 117P.'' Builders would have to demonstrate compliance with the performance standards and receive FRA approval prior to building the cars.

G. Existing Tank Cars for High-Hazard Flammable Trains

As discussed in Section F above, there are three proposed tank car Options for new cars, each with a prescribed tank car and a performance standard. PHMSA proposes to also require existing cars to meet the same DOT Specification 117P performance standard as these new cars, except for the requirement to include top fittings protections. Existing tank car tanks may continue to rely on the equipment installed at the time of manufacture. PHMSA chose not to include top fitting protections as part of any retrofit requirement as the costliness of such retrofit is not supported with a corresponding appropriate safety benefit.[63] Therefore, retrofitted cars will meet the DOT Specification 117P performance standard and may continue to rely on the equipment installed at the time of manufacture. The Options for the performance standard outlined above and in the regulatory text of this NPRM are:

- Option 1: PHMSA and FRA designed car;
- Option 2: AAR 2014 Tank Car; and
- Option 3: Enhanced Jacketed CPC–1232.

We request comments regarding the impacts associated with each tank car option as a standard for existing tank cars. Specifically, we would like to know which portions of the fleet commenters expect would be retrofitted, repurposed, or retired under each option, and the anticipated costs and benefits.

In the September 6, 2013 ANPRM we specifically requested comments pertaining to the various retrofit options discussed in the tank car petitions. In its comments, NTSB urges PHMSA to take immediate action to require a safer package for transporting flammable hazardous materials by rail. In its comments, NTSB restates its concerns that any regulatory action should apply to new construction and the existing tank car fleet.

Railway Supply Institute strongly urges PHMSA to adopt a separate approach for existing tank cars that is uniquely tailored to the needs of the existing DOT Specification 111 tank car fleet. It adds,

> Many builders and offerors have already made a significant capital investment in ordering and manufacturing new tank cars that are built to the CPC–1232 standard and thus are also compliant with the P–1577 standards. A total of 55,546 CPC–1232 compliant tank cars will be in service by the end of 2015. This level of activity represents an industry investment in excess of $7.0 billion. In light of the industry's proactive decision to incorporate these new safety enhancements by adopting this standard, RSICTC requests that PHMSA recognize that these cars already contain safety enhancements and thus exempt them from any additional modifications that may be required under the future rule. RSICTC urges PHMSA to expeditiously address this aspect of the rulemaking to remove any uncertainty which may otherwise impede the enhancement of overall fleet safety performance.

In their comments Watco and the Railway Supply Institute (RSI) provided detailed cost information on each of the enhancements necessary to bring older cars up to the new performance standard. These include the cost of top fitting protections,[64] jackets, thermal protection or replacement of the pressure relief valve, a new bottom outlet valve handle, full-height head shields, and ECP brake installation (for Option 1).

TABLE 19—RETROFIT COSTS FROM PUBLIC COMMENTS

Retrofit option	Cost
Bottom outlet valve handle	$1,200
Pressure relief valve	1,500
New truck	16,000
Thermal protection	4,000
Full jacket	23,000
Full height head shield	17,500
Top fitting protection (if no top fitting protection)[68]	24,500
ECP brakes	5,000

Two retrofit options—increased $\frac{1}{8}$ inch thickness and roll-over protection—were not included in the public comments providing cost estimates. We expect that existing tank cars with $\frac{7}{16}$ inch shell thickness will meet this any tank car standard with $\frac{9}{16}$ inch shell thickness by adding $\frac{1}{8}$ inch thickness to the retrofitted jacket (increasing the jacket thickness from its usual 11-gauge thickness), and assume this thicker jacket costs an additional $2,000 (from the estimated $23,000 cost for an 11-gauge jacket). In addition, we expect no costs from any retrofit for roll-over protection relative to the top-fitting the protection cost estimate provided in public comments.

Many public commenters raised technical issues and potential implementation problems from an industry-wide retrofit for crude oil and ethanol cars. For example, the API public comment noted issues with the extra weight on stub sills and tank car structures, and issues with head shields and brake wheels/end platforms, and issues with truck replacement. API also expressed implementation concerns about shop capacity, the current backlog of car orders, and engineering capacity. Public commenters stated that PHMSA should set an implementation timeframe conducive to avoiding service bottlenecks.

While the CPC 1232 tank car enhancements will significantly improve safety for newly manufactured tank cars, RSICTC strongly urges PHMSA to promulgate a separate rulemaking for existing tank cars that is uniquely tailored to the needs of the existing DOT Specification 111 tank car fleet. RSICTC further states, ''[s]hould modifications be made to the existing jacketed DOT–111s to conform to the CPC–1232 standards, we again urge PHMSA to allow these modified cars to remain in active service for the duration of their regulatory life.'' RSICTC also submits that PHMSA adopt a ten-year program allowing compliance to be achieved in phases through modification, re-purposing or retirement of unmodified tank cars in Class 3, PG

[63] The cost to retrofitting Top fitting protection (if no top fitting protection) is estimated to be $24,500, while the comparable effectiveness rates are low. For effectiveness rates see Table 19.

[64] Top Fitting Protections are new construction requirements only and are not required as part of any retrofits.

I and II flammable liquid service. Tank car modifications supported by RSICTC include adding half-height head shields, protecting top and bottom fittings and adding pressure release valves or enhancing existing pressure release valves.

Greenbrier, a tank car manufacturer and servicer has stated that the most vital of these modifications is the addition of a trapezoidal or conforming half-height head shield to prevent penetration of tank cars by loose rails. Greenbrier stated that together with the top and bottom fittings protections and enhanced release valves, these improvements could significantly limit the likelihood of breaching the tank car. Further, Greenbrier commented that the ten-year timeline suggested by RSICTC is excessive and unmodified tank cars could and should be removed from hazardous materials service much sooner.

API and other commenters stated in their comments that they are strongly opposed to the mandating of any retrofits beyond the higher-flow pressure relief device recommended by the T87.6 Task Force for thermal protection due to the lack of economic and logistical feasibility. The table 20 presents how we expect the fleet to evolve going forward if regulations are not adopted.

TABLE 20—FLEET PROJECTIONS 2015–2034 ABSENT NEW REGULATION

Year	Total cars baseline	DOT 111	DOT 111 with jacket	CPC 1232	CPC 1232 with jacket
2014	89,422	51,592	5,600	22,380	9,850
2015	109.722	51,592	5,600	22,380	30,150
2016	115,544	51,592	5,600	22,380	35,972
2017	121,366	51,592	5,600	22,380	41,794
2018	127,188	51,592	5,600	22,380	47,616
2019	133,010	51,592	5,600	22,380	53,438
2020	133,010	51,592	5,600	22,380	53,438
2021	133,010	51,592	5,600	22,380	53,438
2022	133,010	51,592	5,600	22,380	53,438
2023	133,010	51,592	5,600	22,380	53,438
2024	133,010	51,592	5,600	22,380	53,438
2025	133,010	51,592	5,600	22,380	53,438
2026	133,010	51,592	5,600	22,380	53,438
2027	133,010	51,592	5,600	22,380	53,438
2028	133,010	51,592	5,600	22,380	53,438
2029	133,010	51,592	5,600	22,380	53,438
2030	133,010	51,592	5,600	22,380	53,438
2031	133,010	51,592	5,600	22,380	53,438
2032	133,010	51,592	5,600	22,380	53,438
2033	133,010	51,592	5,600	22,380	53,438
2034	133,010	51,592	5,600	22,380	53,438

PHMSA believes that reliance on HHFTs to transport millions of gallons of flammable materials is a risk that must be addressed. For the purposes of crude oil and ethanol that are classed as flammable liquids, the DOT Specification 111 tank car would no longer be authorized for use in HHFT. A risk-based timeline for continued use of the DOT Specification 111 tank car in HHFTs is provided in §§ 173.241, 173.242, and 173.243. This approach also provides time for car owners to update existing fleets while prioritizing risk-reduction from the highest danger (packing group) flammable liquid material (See table 15).

It has been demonstrated that the DOT Specification 111 tank car provides insufficient puncture resistance, is vulnerable to fire and roll-over accidents, and the current bottom outlet valves are easily severable in HHFT accidents. These risks have been demonstrated by recent accidents of HHFTs transporting flammable liquids.

PHMSA is proposing to limit continued use of the DOT Specification 111 tank car to non-HHFTs. In addition, PHMSA is proposing to authorize the continued use of DOT Specification 111 tank car in combustible liquid service, given the risks associated with crude oil or ethanol, classified as a flammable liquid, are greater than that of combustible liquids. This rule does not cover unit trains of materials that are classed or reclassified as a combustible liquid. Existing HMR requirements for these materials will not change. Therefore, under current § 172.102(c)(3) Special provision B1, for materials with a flash point at or above 38 °C (100 °F) that are classed or reclassed as combustible liquids (see § 173.150(f)) or, crude oil and ethanol that are classed as flammable liquids (all packing groups) and not transported in HHFTs, an existing DOT Specification 111 tank car will continue to be authorized for use. Thus, except those tank cars intended for combustible liquid service, any tank car manufactured after October 1, 2015 that will be used in a HHFT must meet or exceed the new DOT Specification 117 standard.

Because of the risks involved, PHMSA is applying the same requirements for new cars as it is for existing cars, with one exception. PHMSA does not propose to require additional top fittings protection for retrofits, because the costs exceed the benefits. Newly constructed cars, however, are required to have additional top fittings protection. Except for additional top fittings protection, the requirements for newly constructed tank cars and retrofits are the same.

If it can be ascertained that an existing tank car can meet the new performance standards, it would be authorized for use in a HHFT. From a technical standpoint, PHMSA expects legacy cars will be able to withstand the additional weight across all of the tank car options, without truck replacement, because PHMSA believes the vast majority of cars in crude and ethanol service have been built in the past 15 years. As a result, cars in this service should have a truck that would support the extra weight of the retrofits. PHMSA believes all cars manufactured in this time period were built to a 286,000 lbs. weight limit standards, and would include a truck that would support the extra weight of retrofits.

The proposed changes for existing tank cars are based on comments discussed above, simulations, and

modeling. Modeling and simulation of puncture speed velocity of DOT Specification 111 tank cars currently used to transport ethanol or crude oil indicate that a velocity of approximately 7.4 mph will puncture the shell of the tanks when struck with a rigid 12″ x 12″ indenter with a weight of 297,000 pounds. Validation of this model has been accomplished using the results of puncture tests performed at the Transportation Technology Center in Pueblo, CO.[65] Further, based on modeling and simulation, the head of an unjacketed DOT Specification 111 tank car, when struck with a 12″ x 12″ indenter weighing 286,000 pounds will puncture at 7.6 mph. Table 21 provides the tank car shell and head puncture velocities of the DOT Specification 117 tank car Options proposed in this rule.

TABLE 21—EFFECTIVENESS OF EXISTING TANK CAR OPTIONS RELATIVE TO THE NON-JACKETED DOT111 SPECIFICATION TANK CAR

Tank car	Total (%)	Head puncture (%)	Shell puncture (%)	Thermal damage (%)	Top fittings (%)	BOV (%) chose not to include top fitting protections
Option 1	51	21	17	12	N/A	<1
Option 2	50	21	17	12	N/A	<1
Option 3	40	19	9	12	N/A	0

Similar to the methodology for estimating the effectiveness of new cars, PHMSA uses these puncture velocities to arrive at risk reduction estimates for retrofits. In evaluating train accidents involving HHFTs listed in Table 3 above, we found that all but one of the derailments occurred in excess of 20 mph. Only two of the derailments occurred at a speed of between 20 mph and 30 mph, four occurred between 30 and 40 mph and six occurred at speeds in excess of 40 mph. The documented derailment speeds exceed the puncture velocity of both the DOT Specification 111 tank car and the Options proposed in this rule. However, during a derailment the speeds of impacts will vary considerably between cars, and many of those impacts will not result in a puncture. The portion of those impacts that could result in a puncture would decline with the higher puncture velocity of the DOT Specification 117 tank car Options proposed in this NPRM. As a result of use of the proposed DOT Specification 117 tank cars, we expect the volume of flammable liquid released into the environment and the consequences of a train accident to be reduced.

For Option 1, the PHMSA and FRA designed car,

- Retrofitting a DOT 111 Unjacketed (not including ECP brake risk reduction) reduces accident severity by 51 percent.
- Retrofitting a DOT 111 Jacketed (not including ECP brake risk reduction) reduces accident severity by 21 percent.
- Retrofitting a CPC 1232 Unjacketed (not including ECP brake risk reduction) reduces accident severity by 28 percent.
- Retrofitting a CPC 1232 Jacketed (not including ECP brake risk reduction) reduces accident severity by 10 percent.

For Option 2, the AAR 2014 car,

- Retrofitting a DOT 111 Unjacketed reduces accident severity by 50 percent.
- Retrofitting a DOT 111 Jacketed reduces accident severity by 21 percent.
- Retrofitting a CPC 1232 Unjacketed reduces accident severity by 28 percent.
- Retrofitting a CPC 1232 Jacketed reduces accident severity by 10 percent.

For Option 3, the Enhanced CPC 1232 car,

- Retrofitting a DOT 111 Unjacketed reduces accident severity by 40 percent.
- Retrofitting a DOT 111 Jacketed reduces accident severity by 11 percent.
- Retrofitting a CPC 1232 Unjacketed reduces accident severity by 18 percent.
- Retrofitting a CPC 1232 Jacketed does not reduce accident severity.

In Recommendation R–12–5, NTSB recommended that new and existing tank cars authorized for transportation of ethanol and crude oil in PGs I and II have enhanced tank head and shell puncture resistance systems and top fittings protection. PHMSA chose not to include top fitting protections as part of any retrofit requirement as the costliness of such retrofit is not supported with a corresponding appropriate safety benefit.

A requirement to retrofit existing cars would be costly. Total costs could exceed $30,000 per car. In addition, a retrofit would result in a decrease in asset utilization (out-of-service time of at least one month). As such, PHMSA is proposing to allow numerous options for compliance. Existing DOT Specification 111 tank cars may be retrofitted to DOT Specification 117, retired, repurposed, or operated under speed restrictions.

As a result of this rule, PHMSA expects all DOT Specification 111 Jacketed and CPC 1232 Jacketed crude oil and ethanol cars (about 15,000 cars) to be transferred to Alberta, Canada tar sands services. It does, however, expect the majority of DOT 111 Un-Jacketed and CPC 1232 Unjacketed cars (about 66,000 cars) to be retrofitted; some DOT Unjacketed and CPC 1232 Unjacketed cars (about 8,000 cars) will be transferred to Alberta, Canada tar sands services. No existing tank cars will be forced into early retirement.

Specifically, for Option 1, the PHMSA and FRA designed car,

- Retrofitting a DOT 111 Unjacketed would cost $33,400, plus $1,032 in out-of-service time and $1,019 in additional fuel and maintenance costs per year.
- Retrofitting a CPC 1232 Unjacketed would cost $32,900, plus $944 in out-of-service time and $641 in additional fuel and maintenance costs per year.

For Option 2, the AAR 2014 car,

- Retrofitting a DOT 111 Unjacketed would cost $28,900, plus $1,033 in out-of-service time and $1,019 in additional fuel and maintenance costs per year.
- Retrofitting a CPC 1232 Unjacketed would cost $28,400, plus $944 in out-of-service time and $641 in additional fuel and maintenance costs per year.

For Option 3, the Enhanced CPC 1232 car,

- Retrofitting a DOT 111 Unjacketed would cost $26,730, plus $1,032 in out-of-service time and $1019 in additional fuel and maintenance costs per year.
- Retrofitting a CPC 1232 Unjacketed would cost $26,230, plus $944 in out-of-service time and $641 in additional fuel and maintenance costs per year.

To better focus limited resources on the highest risk materials, we are proposing to revise each of the bulk packaging sections, §§ 173.241, 173.242,

[65] ''Detailed Puncture Analyses Tank Cars: Analysis of Different Impactor Threats and Impact Conditions'' can be found at: *http://www.fra.dot.gov/eLib/details/L04420.*

and 173.243, to a provide a timeline for the phase out of existing cars that are in HHFTs based on packing group (See table 15).

This risk-based approach provides sufficient time for car owners to update the existing fleet while prioritizing the highest danger material. Specifically, based on estimates of the current fleet size and composition paired with production capacity of tank car manufacturers expressed by commenters to the ANPRM, we believe that providing a two year phase in of packing group I will not result in a shortage of available tank cars for HHFT (See RIA for further detail). It also provides additional time for cars to meet the DOT Specification 117 performance standard if offerors take steps to reduce the volatility of the material. Separation of dissolved gases from crude oil, for example can reduce the boiling point and flammability of the material, potentially shifting the product to a different Packing Group. This may be achieved through a number of methods, including using better separators and aging of crude oil.

As proposed in this NPRM, DOT Specification 111 tank cars may be retrofitted to DOT Specification 117, retired, repurposed, or operated under speed restrictions. Further our proposal limits the future use of DOT Specification 111 tank cars only if used in a HHFT. DOT Specification 111 tank cars can continue to be used to transport other commodities, including flammable liquids provided they are not in a HHFT. These options provide tank car owners and rail carriers with the opportunity to make operational changes that focus on the greatest risks and minimize the impact to the greatest extent practicable.

PHMSA seeks public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

1. PHMSA expects about 23,000 cars will be transferred to Alberta tar sands service as a result of this rule. PHMSA also expects no cars will be retired as a result of this rule. How many of the existing DOT Specification 111 and CPC–1232 tank cars that will be retired? How many will be repurposed? How many will be retrofitted?

2. What are the benefits and costs of each of those actions (retiring, re-purposing, and retrofitting)?

3. Does this estimate for tar sand service re-purposing reflect the demand for these tank cars? Would any tank cars be re-purposed to transport a different material?

4. Should the CPC–1232 cars be exempted from some or all of the retrofitting requirements described here? If so, what are the benefits and costs of those exemptions?

5. Should CPC–1232 cars have a different implementation timeframe than legacy DOT 111 cars? If so, what are the benefits and costs of a different implementation timeframe? What would the economic effects be of retiring, repurposing or retrofitting, within five years, CPC–1232 tank cars used in flammable liquid service? What would the economic effects be of retiring, repurposing or retrofitting, within ten years, CPC–1232 tank cars used in flammable liquid service?

6. For Options 1 and 2, how would existing legacy tank cars comply with the requirement for an additional $\frac{1}{8}$ inch thickness? Would these cars be retrofitted to have jackets thicker than 11-gauge? To what extent would this introduce engineering challenges?

7. PHMSA estimates all existing crude oil and ethanol cars are capable of handling 286,000 GRL without truck replacement. To what extent would the additional weight of the retrofit Options require structural changes to existing tank cars?

8. PHMSA requests any available detailed data set on the safety features of the existing fleet.

9. Would the increased size and weight of the tank car Options have any other effects not discussed in the NPRM or accompanying RIA? To what extent would they affect braking rates? To what extent would they affect track safety performance? To what extent would they affect loading practices?

10. What additional safety features not discussed here, if any, should PHMSA consider? If so, please provide detailed estimates on the costs and benefits of individual safety features.

11. Do any of the safety features included in any of the Options have costs that exceed benefits? If so, please provide detailed estimates on the costs and benefits of individual safety features.

In addition, while DOT's September 6, 2013 ANPRM, NTSB Recommendation R–12–5, and some commenters and petitions linked enhanced tank car specifications and retrofitting of existing tanks cars to only packaging group I and II materials, this NPRM proposes packaging requirements for all flammable liquids in a HHFT, regardless of packing group. Table 22 provides PHMSA's rational for including flammable liquids in packing groups I, II, and III.

DOT created Class 3 packing groups based on differences in volatility and ignitability [55 FR 16500]. Volatile liquids, having a lower flash point, have higher vapor phase concentrations and upon release, may catch fire immediately or from surface evaporation upon forming pools, generate a flammable cloud which could ignite and burn (flash fire), or explode in a vapor cloud explosion. It is also possible there is no ignition source and instead a potentially toxic and or flammable vapor cloud results. Other factors such as weather conditions, wind direction, and congestion around the release influence the potential impact of the incident. In order to perform a consequence and impact analysis on different types of incidents, PHMSA would model the release amount and properties and determine the subsequent impact of the material and/or energy on people, environment, and physical surroundings. The impact of different types of flammable liquid spills could be evaluated based on trinitrotoluene (TNT) equivalency approach, multi-energy methods, the Baker-Strehlow model, or other methods.[66] [67] The results of the modeling could include 1 radiant heat from a fire, peak overpressure from an explosion, impulse duration, and potential blast size to determine the potential damages. Lower overpressures (less than 10 psig) may result in collapse of nearby buildings, resulting in the people inside them susceptible to injury or fatality, while relatively higher overpressures (>15 psig) are needed to cause a human fatality directly from an explosion.[68] [69]

While Packing Group III materials (flash point greater than or equal to 73 °F) are less volatile and may pose a lower fire and explosion risk than materials in Packing Groups I and II, PHMSA believes the risk of an incident from a HHFT containing Packing Group III flammable liquids is sufficient to warrant enhanced car standards and inclusion in the HHFT definition. Further, PHMSA is concerned about the possibility of spills and fires from HHFT carrying Packing Group III materials in

[66] Sochet I. *Blast effects of external explosions Eighth International Symposium on Hazards, Prevention, and Mitigation of Industrial Explosions,* Yokohama: Japan (2010)—*http://hal.archives-ouvertes.fr/hal-00629253.*

[67] Center for Chemical Process Safety, *Guidelines for Chemical Process Quantitative Risk Analysis.* Wiley (2010).

[68] Kent, J. Handbook of Industrial Chemistry and Biotechnology. Springer (2013).

[69] Nolan, D. Handbook of Fire and Explosion Protection Engineering Principles: for Oil, Gas, Chemical and Related Facilities. William Andrew (2014).

large volumes. Table 22 provides PHMSA's rational for including flammable liquids in packing groups I, II, and III.

TABLE 22—ENHANCED CAR STANDARDS FOR FLAMMABLE LIQUIDS IN HHFT

Issue	Explanation
Volume of Material	The large volume of flammable liquid transported in a HHFT poses a safety and environmental risk regardless of the packing group. Specifically, this amount of material contained in a tank car poses a risk of a considerable oil spill (~35,000 gallon per tank car). Based on the accidents evaluated in the RIA, approximately 5 cars on average release product with an average quantity release of approximately 84,000 gallons. Such a spill could result in significant environmental damage regardless of packing group. By requiring packing group III materials to be contained in a more robust tank car, the potential environmental damage from an oil spill is mitigated as the conditional probability of release would be decreased.
Combustible Liquid Exception.	PHMSA is proposing to retain the exception that permits flammable liquids with a flash point at or above 38 °C (100 °F) to be reclassed as combustible liquids, provided that material does not meet the definition of any other hazard class. Therefore, the existing DOT Specification 111 tank cars would continue to be authorized for these materials. This would allow the existing tank cars to continue to be used for certain low-hazard packing group III flammable liquids that are reclassified as combustible liquids. However, except for combustible liquids service, tank cars manufactured after October 1, 2015, would be required to meet the requirements for the DOT Specification 117 when used in a HHFT.
Consistency	Providing a single packaging authorization across all three flammable liquid packaging groups would simplify the requirements while providing a packaging appropriate to handle all flammable liquids.

PHMSA seeks public comment on the following discussions and questions. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence. Further, we request comments on the following:

1. Are there any relatively lower hazard, lower risk flammable liquids that could potentially be exempt from the enhanced car standards for HHFT?

2. Is the current exception for combustible liquids sufficient to incentivize producers to reduce the volatility of crude oil for continued use of existing tank cars?

3. Would an exception for all PG III flammable liquids further incentivize producers to reduce the volatility of crude oil prior to transportation?

4. What are the impacts on the costs and safety benefits of degasifying to these levels?

5. What are the economic impacts of the proposed phase out date for existing DOT Specification 111 tank cars used to transport PG III flammable liquids?

6. Fire and explosion risk of Class III Flammable liquids

a. What characteristics of a released flammable liquid significantly affect the likelihood and consequence of fire or explosion upon release?

b. What physical or environmental features of a release affect the likelihood and consequence of fire or explosion upon release?

c. What existing scientific information is available concerning the explosion hazards of hydrocarbons and other liquids?

d. What types of flammable liquids are most susceptible to a high-consequence detonation explosion upon release?

e. What data exists on the relationship between liquid properties and fire and blast zone size?

7. Should shippers be allowed to petition PHMSA for an exemption from the requirements for HHFT based on the properties of Class III liquids? What should be considered (e.g. chemical properties, historical data, scientific information) before issuing an exemption?

H. Forthcoming FRA NPRM on Securement and Attendance

On July 23, 2013, Transport Canada issued an Emergency Directive providing safety and security requirements for locomotives in Canada by focusing on securement, attendance, crew size and security of locomotives on main track and sidings.[70] In regard to attendance, the Emergency Directive requires attendance for any locomotive coupled to one or more loaded tank cars containing hazardous materials that are on a main line track.

On August 7, 2013, FRA published EO 28 to address safety issues related to attendance and securement of certain hazardous materials trains. EO 28 prohibits railroads from leaving trains or vehicles transporting the specified hazardous materials unattended on mainline track or siding outside of a yard or terminal unless the railroad adopts and complies with a plan that provides sufficient justification for leaving them unattended under specific circumstances and locations.

In addition to demonstrating the potential tragic consequences of a derailment involving rail cars containing hazardous materials, the incident in Lac Mégantic, Quebec identified vulnerabilities of safety and security that could result in future train accidents. Emergency Order No. 28 was issued to address certain vulnerabilities specific to the Lac-Mégantic incident, but others likely exist. In addition, the agencies' Joint Safety Advisories published on August 7, 2013 and November 20, 2013 stress the importance of security planning and updating security plans to address changes made to railroad operations as a result of Emergency Order No. 28.

We did not seek comments on these or other attendance requirements in the ANPRM. However, as outlined above, RSAC members have submitted a consensus recommendation to FRA regarding the hazard classes and threshold quantities of hazardous materials that should trigger additional operating procedures, including attendance and securement requirements.[71] In summary, RSAC recommended that trains with loaded cars meet new requirements regarding: (1) The duty status and hours of service for any railroad personnel left to attend or secure a train; (2) job briefings for train crews that cover the details of individual responsibilities for the securement of a train; (3) locking requirements for locomotives and/or train controls; (4) verification of securement procedures by personnel not members of the train crew, and reporting verified securement to dispatchers; and (5) procedures for verifying securement in the event that emergency response personnel have been on, under, or between equipment that has been previously secured.

Because the RSAC recommendation is robust in its approach to matters of

[70] The Emergency Directive is available at the following URL: *http://www.tc.gc.ca/eng/mediaroom/backgrounders-safety-locomotives-7292.html.*

[71] The recommendation is available at the following URL: *https://rsac.fra.dot.gov/meetings/Railroad%20Safety%20Advisory%20Committee%20Securement%20Recommendation%20VOTE.pdf.*

attendance and securement, and because it covers hazmat beyond crude oil and ethanol, PHMSA believes that FRA is best suited to address the matter in its forthcoming NPRM based on the RSAC recommendation. PHMSA seeks information and comment on any alternate approaches that may be considered along with the RSAC recommendation regarding the attendance and securement of these types of trains.

VI. Regulatory Review and Notices

A. Executive Order 12866, Executive Order 13563, Executive Order 13610 and DOT Regulatory Policies and Procedures

This NPRM is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB). The NPRM is considered a significant regulatory action under the Regulatory Policies and Procedures order issued by DOT (44 FR 11034, February 26, 1979). PHMSA has prepared and placed in the docket a Regulatory Impact Assessment addressing the economic impact of this proposed rule.

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. The Department of Transportation believes that streamlined and clear regulations are important to ensure compliance with important safety regulations. As such the Department has developed a plan detailing how such reviews are conducted.[72]

Additionally, Executive Orders 12866, 13563, and 13610 require agencies to provide a meaningful opportunity for public participation. Accordingly, PHMSA invites comments on these considerations, including any cost or benefit figures or factors, alternative approaches, and relevant scientific, technical and economic data. These comments will help PHMSA evaluate whether the proposed requirements are appropriate. PHMSA also seeks comment on potential data and information gathering activities that could be useful in designing an evaluation and/or retrospective review of this rulemaking.

The United States has experienced a dramatic growth in the quantity of flammable materials being shipped by rail in recent years. According to the rail industry, in the U.S. in 2009, there were 10,800 carloads of crude oil shipped by rail. In 2013, there were 400,000 carloads. In the Bakken region, over one million barrels a day of crude oil was produced in March 2014,[73] most of which is transported by rail.

Transporting flammable material carries safety and environmental risks. The risk of flammability is compounded in the context of rail transportation because petroleum crude oil and ethanol are commonly shipped in large unit trains.

In recent years, train accidents involving a flammable material release and resulting fire with severe consequences have occurred with increasing frequency (i.e. Arcadia, OH, Plevna, MT, Casselton, ND, Aliceville, AL, Lac-Mégantic, Quebec).

PHMSA is proposing this NPRM, in order to increase the safety of crude and ethanol shipments by rail. We are proposing revisions to the HMR to establish requirements specific to HHFTs. As described in greater detail throughout this document, this NPRM is a system-wide, comprehensive approach consistent with the risks posed by flammable liquids transported by rail in HHFTs. Specifically, requirements address:

(1) Rail routing restrictions;

(2) tank car integrity;

(3) speed restrictions;

(4) braking systems;

(5) proper classification and characterization of mined liquid and gas; and

(6) notification to State Emergency Response Commissions (SERCs).

Table 1 (Restated here) summarizes major provisions of the proposal, and identifies those affected.

TABLE 1—AFFECTED ENTITIES AND REQUIREMENTS

Proposed requirement	Affected entity
Better classification and characterization of mined gases and liquids	Offerors/Shippers of all mined gases and liquids.
• Written sampling and testing program for all mined gases and liquids, such as crude oil, to address: (1) frequency of sampling and testing; (2) sampling at various points along the supply chain; (3) sampling methods that ensure a representative sample of the entire mixture; (4) testing methods to enable complete analysis, classification, and characterization of material; (5) statistical justification for sample frequencies; and, (6) duplicate samples for quality assurance. • Require offerer to certify that program is in place, document the testing and sampling program, and make results available to DOT personnel, upon request.	
Rail routing risk assessment	Rail Carriers, Emergency Responders.
• Requires carriers to perform a routing analysis that considers 27 safety and security factors. The carrier must select a route based on findings of the route analysis. These planning requirements are prescribed in § 172.820 and would be expanded to apply to HHFTs.	
Notification to SERCs	
• Require trains containing one million gallons of Bakken crude oil to notify State Emergency Response Commissions (SERCs) or other appropriate state delegated entity about the operation of these trains through their States.	
Reduced operating speeds	

[72] Department of Transportation's plan for retrospective regulatory reviews is available at the following URL: *http://www.dot.gov/regulations/dot-retrospective-reviews-rules.*

[73] Information regarding oil and gas production is available at the following URL: *http://www.eia.gov/petroleum/drilling/#tabs-summary-2.*

TABLE 1—AFFECTED ENTITIES AND REQUIREMENTS—Continued

Proposed requirement	Affected entity
• Restrict all HHFTs to 50-mph in all areas; • PHMSA is requesting comment on three speed restriction options for HHFTs that contain any tank cars not meeting the enhanced tank car standards proposed by this rule: (4) a 40-mph maximum speed restriction in all areas; (5) a 40-mph speed restriction in high threat urban areas [74]; and, (6) a 40-mph speed restriction in areas with a 100K+ population. • PHMSA is also requesting comment on a 30-mph speed restriction for HHFTs that do not comply with enhanced braking requirements. *Enhanced braking* • Require all HHFTs be equipped with alternative brake signal propagation systems. Depending on the outcome of the tank car standard proposal and implementation timing, all HHFTs would be operated with either electronic controlled pneumatic brakes (ECP), a two-way end of train device (EOT), or distributed power (DP).	
Enhanced standards for both new and existing tank cars	Tank Car Manufacturers, Tank Car Owners, Shippers and Rail Carriers.
• Require new tank cars constructed after October 1, 2015 (that are used to transport flammable liquids as part of a HHFT) to meet criteria for a selected option, including specific design requirements or performance criteria (e.g., thermal, top fittings, and bottom outlet protection; tank head and shell puncture resistance) is selected in the final rule. PHMSA is requesting comment on the following three options for the DOT Specification 117: 1. FRA and PHMSA Designed Car, or equivalent 2. AAR 2014Tank Car,[75] or equivalent 3. Jacketed CPC–1232 [76], or equivalent • Require existing tank cars that are used to transport flammable liquids as part of a HHFT, to be retrofitted to meet the selected option for performance requirements, except for top fittings protection. Those not retrofitted would be retired, repurposed, or operated under speed restrictions for up to five years, based on packing group assignment of the lading.	

Table 5 provides the costs and benefits of the individual provisions of the proposed rule. PHMSA is co-proposing three different options for tank car standards and three different options for speed restrictions. Table 6 presents the costs and benefits of the various combinations of proposed tank car and speed restriction provisions.

Please note that because there is overlap in the risk reduction achieved between some of the proposed requirements listed in the Table 5 (restated). The total benefits and costs of the provisions cannot be accurately calculated by summing the benefits and costs of each proposed provision. Table 6 (restated), on the other hand, presents total benefits and costs of the combinations of speed restriction and tank car proposals. Explanation of the comprehensive benefits and costs of each combination of proposals is included at the end of the RIA.

Please also note that, given the uncertainty associated with the risks of crude oil and ethanol shipments in the table below (Table 5 restated here) contains a range of benefits estimates. The low end of the range estimates risk from 2015 to 2034 based on the U.S. safety record for crude oil and ethanol from 2006 to 2014, adjusting for the projected increase in crude oil and ethanol shipment volume over the next 20 years. The high end of the range estimates risk from 2015 to 2034 based on the U.S. safety record for crude oil and ethanol shipments from 2006 to 2014, adjusting for the projected increase in crude oil and ethanol shipments volume, plus an estimate that the U.S. would experience the equivalent of 10 higher consequence safety events—nine of which would have environmental damages and monetized injury and fatality costs exceeding $1.15 billion and one of which would have environmental damages and monetized injury and fatality costs exceeding $5.75 billion—over the next 20 years. This outcome could result from a smaller number of more severe events, or more numerous events that are less severe.

TABLE 5—20 YEAR COSTS AND BENEFITS BY STAND-ALONE PROPOSED REGULATORY AMENDMENTS 2015–2034 [77]

Affected section [78]	Provision	Benefits (7%)	Costs (7%)
49 CFR 172.820 ..	Rail Routing + ...	Cost effective if routing were to reduce risk of an incident by 0.17%.	$4.5 million.
49 CFR 173.41	Classification of Mined Gas and Liquid	Cost effective if this requirement reduces risk by 0.61%.	16.2 million.
49 CFR 174.310 ..	Notification to SERCs	Qualitative	0.

[74] As defined in 49 CFR 1580.3—High Threat Urban Area (HTUA) means an area comprising one or more cities and surrounding areas including a 10-mile buffer zone, as listed in appendix A to Part 1580 of the 49 CFR.

[75] On March 9, 2011 AAR submitted petition for rulemaking P–1577, which was discussed in the ANPRM. In response to the ANPRM, on November 15, 2013, AAR and ASLRAA submitted as a comment recommendations for tank car standards that are enhanced beyond the design in P–1577. For the purposes of this rulemaking this tank car will be referred to as the ''AAR 2014 tank car.'' See *http://www.regulations.gov/#!documentDetail;D=PHMSA-2012-0082-0090.*

[76] In 2011, the AAR issued Casualty Prevention Circular (CPC) 1232, which outlines industry requirements for additional safety equipment on certain DOT Specification 111 tanks ordered after October 1, 2011, and intended for use in ethanol and crude oil service.

TABLE 5—20 YEAR COSTS AND BENEFITS BY STAND-ALONE PROPOSED REGULATORY AMENDMENTS 2015–2034 [77]—Continued

Affected section [78]	Provision	Benefits (7%)	Costs (7%)
	Speed Restriction: Option 1: 40 mph speed limit all areas *.	$199 million–$636 million	2,680 million.
	Speed Restriction: Option 2: 40 mph 100k people *	$33.6 million–$108 million	240 million.
	Speed Restriction: Option 3: 40 mph in HTUAs *	$6.8 million–$21.8 million	22.9 million.
	Braking: Electronic Pneumatic Control with DP or EOT #.	$737 million–$1,759 million	500 million.
49 CFR Part 179	Option 1: PHMSA and FRA designed car @	$822 million–$3,256 million	3,030 million.
	Option 2: AAR 2014 Tank Car	$610 million–$2,426 million	2,571 million.
	Option 3: Jacketed CPC–1232 (new const.)	$393 million–$1,570 million	2,040 million.

Note: "*" indicates voluntary compliance regarding crude oil trains in high-threat urban areas (HTUA).
"+" indicates voluntary actions that will be taken by shippers and railroads.
"#" indicates that only tank car Option 1, the PHMSA and FRA designed car, has a requirement for ECP brakes. However, all HHFTs would be required to have DP or two-way EOT, regardless of which tank car Option is selected at the final rule stage.

TABLE 6—20 YEAR BENEFITS AND COSTS OF PROPOSAL COMBINATIONS OF PROPOSED REGULATORY AMENDMENTS 2015–2034 [79]

Proposal	Benefit range (millions)	Cost (millions)
PHMSA and FRA Design Standard + 40 MPH System Wide	$1,436–$4,386	$5,820
PHMSA and FRA Design Standard + 40 MPH in 100K	$1,292–$3,836	3,380
PHMSA and FRA Design Standard + 40 MPH in HTUA	$1,269–$3,747	3,163
AAR 2014 Standard + 40 MPH System Wide	$794–$3,034	5,272
AAR 2014 Standard + 40 MPH in 100K	$641–$2,449	2,831
AAR 2014 Standard + 40 MPH in HTUA	$616–$2,354	2,614
CPC 1232 Standard + 40 MPH System Wide	$584–$2,232	4,741
CPC 1232 Standard + 40 MPH in 100K	$426–$1,626	2,300
CPC 1232 Standard + 40 MPH in HTUA	$400–$1,527	2,083

Crude Oil Transport by Rail

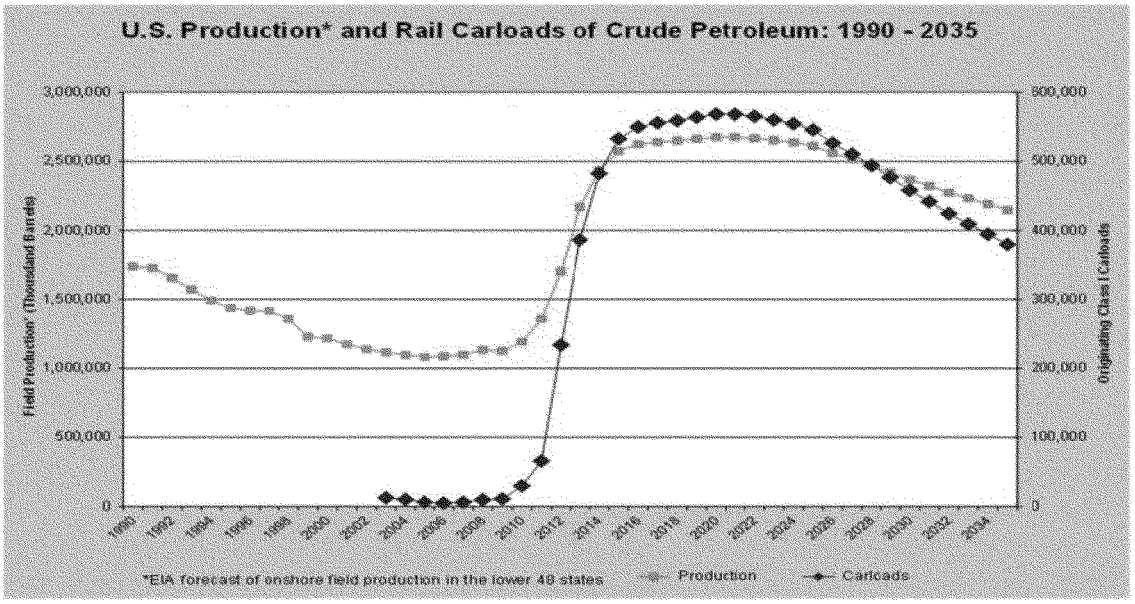
Figure 5 below shows the recent strong growth in crude oil production in the U.S., as well as growth in the number of rail carloads shipped. Figure 5 also shows forecasted domestic crude oil production from the Energy Information Administration (EIA) and PHMSA's projected strong demand for the rail shipment of crude oil.

[77] All costs and benefits are in millions over 20 years, and are discounted to present value using a 7 percent rate.

[78] All affected sections of the Code of Federal Regulations (CFR) are in Title 49.

[79] All costs and benefits are in millions, and are discounted to present value using a 7 percent rate.

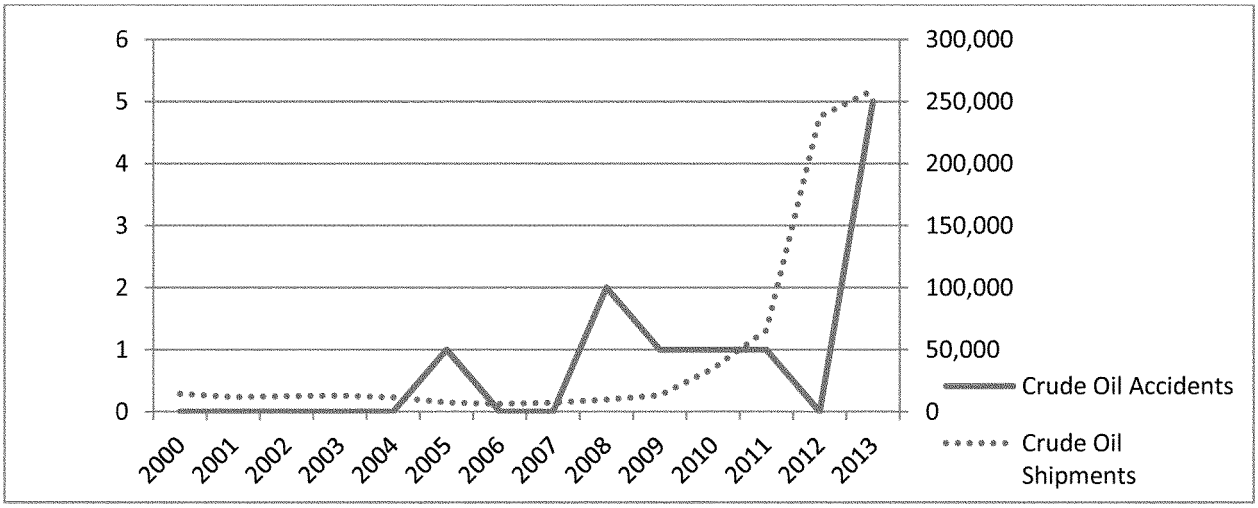
Figure 5: Historic and Projected U.S. Production and Rail Carloads of Crude Petroleum 1990-2035



Source: EIA forecast

A rise in rail accidents involving crude oil has also risen along with the increase in crude oil production and rail shipments of crude oil. Figure 6 below shows this rise.

Figure 6: Carloads of Crude Oil Shipped and Rail Accidents (Mainline Derailments) 2000-2013



Source: STB Waybill Sample and PHMSA Incident Report Database

Based on these train accidents, the projected continued growth of domestic crude oil production, and the growing number of train accidents involving crude oil, PHMSA concludes that the potential for a train accident involving crude oil has increased, which has raised the likelihood of a catastrophic train accident that would cause substantial damage to life, property, and the environment.

Additional factors give rise to increased risks, and thus the increased probability of a catastrophic event occurring. First, the risk of flammability is compounded, because of the practice of shipping very large quantities of oil in one train, as shown by the increased use of high-hazard flammable trains. In 2008 there were less than 10,000 rail carloads of crude oil. By 2013 the

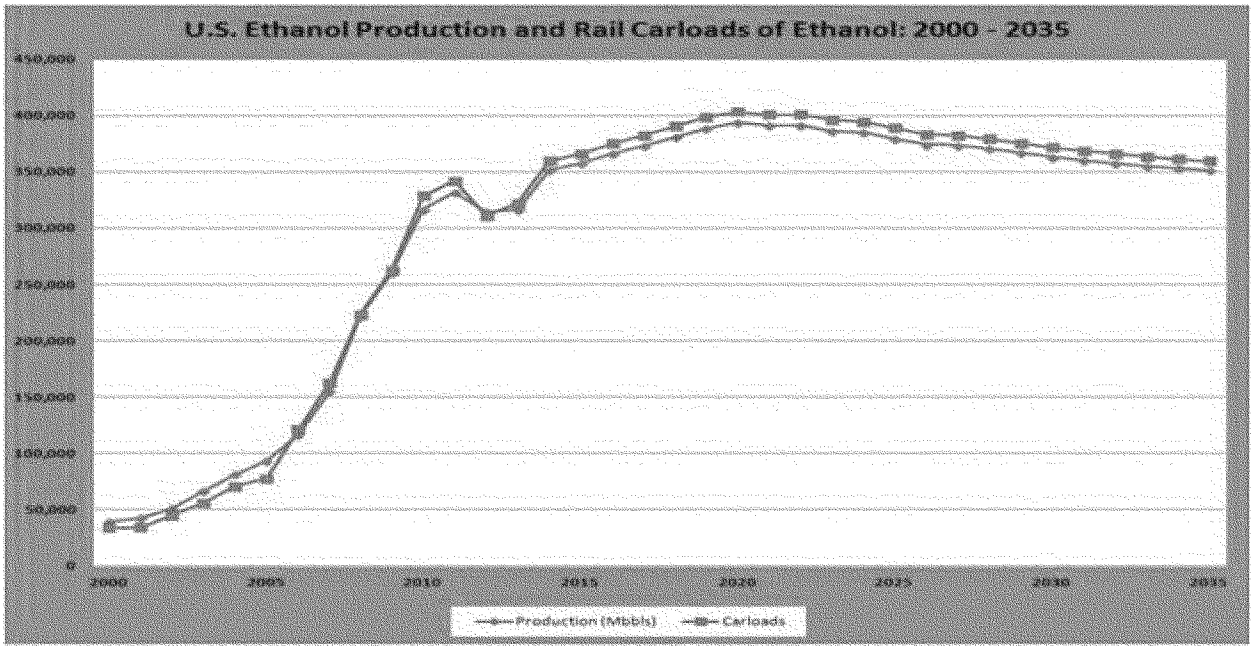
number of rail carloads of increased to over 400,000.[80] Second, unlike other Class 3 manufactured goods, organic materials from oil and gas production represent a unique challenge in regards to classification. Differences in the chemical makeup of the raw material can vary across wells and over time. Unprocessed crude oil may present unique hazards such as corrosivity, sulfur content and resolved gas content, thereby affecting the integrity of the tank car.

PHMSA's analysis of this combination of factors suggests an increase in the risk of rail related accidents and an increase in the likelihood of a catastrophic event.

Ethanol

U.S. ethanol production has increased considerably during the last 10 years and has generated similar growth in the transportation of ethanol by rail, according to a recent white paper by the Association of American Railroads (AAR).[81] As shown in the Figure 7 EIA projects strong demand for ethanol in the future.

Figure 7: Historic and Forecasted U.S. Ethanol Production and Rail Carloads 2000-2035



Source: EIA

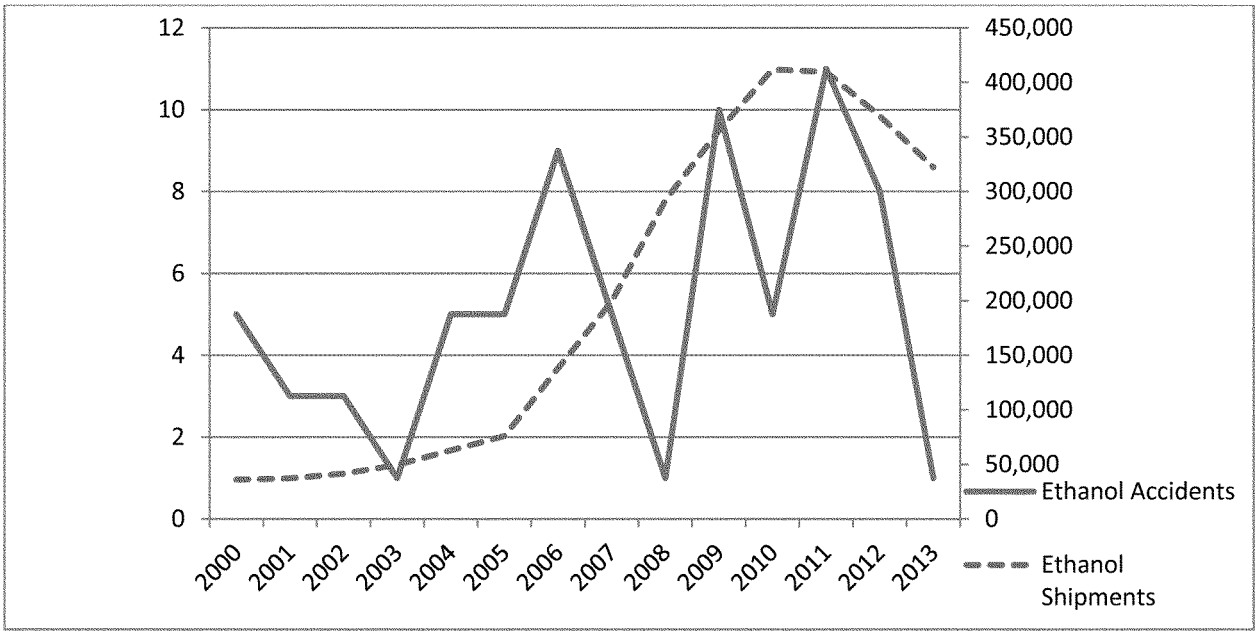
In 2008 there were around 292,000 rail carloads of ethanol. In 2011, that number increased over 40 percent to 409,000.[82] Not surprisingly, this growth in rail traffic has been accompanied by an increase in the number of rail accidents involving ethanol. Figure 8 below plots the total number of rail accidents involving ethanol during the last 13 years compared to the total carloads of ethanol. The left axis shows the total number of rail derailments and the right axis shows total carloads shipped.

[80] *http://www.stb.dot.gov/stb/industry/econ_waybill.html.*

[81] Association of American Railroads. 2013. Railroads and Ethanol. Available online at *https://www.aar.org/keyissues/Documents/Background-Papers/Railroads%20and%20Ethanol.pdf.*

[82] *http://www.stb.dot.gov/stb/industry/econ_waybill.html.*

Figure 8: Carloads of Ethanol Shipped and Rail Accidents (Mainline Derailments) 2000-2013



Source: STB Waybill Sample and PHMSA Incident Report Database

Summary of Regulatory Changes

As described in greater detail throughout this document, the proposed rule is a system-wide, comprehensive approach consistent with the risks posed by high-hazard flammable trains by rail. Requirements address:

- Rail Routing;
- Tank Cars;
- Braking;
- Speed Restrictions;
- Classification of Mined Gas and Liquid; and
- Notification to SERCs.

This approach is designed to mitigate damages of rail accidents involving flammable materials, though some provisions could also prevent accidents.

The RIA discusses, consistent with this NPRM, six requirement areas. Although we analyze the effects of individual requirements separately, the preferred alternative proposed in this rulemaking is a system-wide approach covering all requirement areas consistent with this NPRM.

The analysis shows that expected damages based on the historical safety record are expected to exceed $4.5 billion and that damages from high-consequence events could reach $13.7 billion over a 20-year period in the absence of the rule.

PHMSA has proposed multiple options for Speed Restrictions and Tank Car standards. These options are mutually exclusive. PHMSA may select one of these options for each of Speed Restrictions and Tank Car standards, potentially including modifications based on public comments in response to this NPRM and changed circumstances.

PHMSA supports a system-wide approach covering all requirement areas provided above. Following consideration of public comments, PHMSA will consider alternatives for one or more of these requirement areas.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531) (UMRA) requires each agency to prepare a written statement for any proposed or final rule that includes a ''Federal mandate that may result in the expenditure by State, local, and Native American Indian tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The value equivalent of $100 million in 1995, adjusted for inflation to 2012 levels, is $151 million. If adopted, this proposed rule would not impose enforceable duties on State, local, or Native American Indian tribal governments. UMRA was designed to ensure that Congress and Executive Branch agencies consider the impact of legislation and regulations on States, local governments, and tribal governments, and the private sector. With respect to States and localities, UMRA was an important step in recognizing State and local governments as partners in our intergovernmental system, rather than mere entities to be regulated or extensions of the Federal government.

As described in greater detail throughout this document, the proposed rule is a system-wide, comprehensive approach consistent with the risks posed by high-hazard flammable materials transported by rail. Specifically, requirements address: (1) Proper classification and characterization, (2) operational controls to lessen the likelihood and consequences of train accidents and (3) tank car integrity. The RIA discusses, consistent with this NPRM, six requirement areas: Rail Routing, Classification of Mined Gas and Liquid, Notification of SERCs, Speed Restrictions, Braking, and enhanced Tank Car standards.

If adopted, this proposed rule would impose enforceable duties on the private sector of an annual average of approximately $250-$600 million over a 20-year period. It might result in costs to the private sector that exceed $151 million in any one year and those costs and benefits associated with this rulemaking have been discussed under paragraph A, Executive Order 12866, Executive Order 13563, Executive Order 13610 and DOT Regulatory Policies and Procedures, of this section. The RIA is available in the public docket for this rulemaking.

PHMSA invites comments on these considerations, including any unfunded mandates related to this rulemaking.

C. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have ''substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Orders 13132 (''Federalism''). The proposals in the NPRM, if adopted, would not have any direct effect on the states, or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the national government and the states, or political subdivisions, or the distribution of power and responsibilities among the various levels of government. We invite state and local governments with an interest in this rulemaking to comment on any effect that proposed requirements could have on them, if adopted. However, several of the issues addressed in this NPRM are subject to our preemption authority, i.e., classification, packaging, and rail routing. In regard to rail routing, for example, in a March 25, 2003 final rule (68 FR 14509) we concluded that the specifics of routing rail shipments of hazardous materials preempts all states, their political subdivisions, and Indian tribes from prescribing or restricting routes for rail shipments of hazardous materials, under Federal hazardous material transportation law (49 U.S.C. 5125) and the Federal Rail Safety Act (49 U.S.C. 20106). We would expect the same preemptive effect as a result of this rulemaking, and thus, the consultation and funding requirements of Executive Orders 13132 and 13175 do not apply. Nonetheless, we invite state and local governments with an interest in this rulemaking to comment on any effect that proposed requirements could have on them, if adopted.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect Indian communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Indian tribes.

We analyzed this NPRM in accordance with the principles and criteria prescribed in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rulemaking does not significantly or uniquely affect tribes, and does not impose substantial and direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply; thus, a tribal summary impact statement is not required. However, we are interested in any possible impacts of the notification requirements on Tribal Emergency Response Commissions (TERCs) or other tribal institutions. We invite Indian tribal governments to provide comments on the costs and effects the proposed requirements could have on them, if adopted, especially any burdens associated with the proposed notification requirements.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

Under the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 et seq.), PHMSA must consider whether a rulemaking would have a ''significant economic impact on a substantial number of small entities.'' ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.

To ensure potential impacts of rules on small entities are properly considered, PHMSA developed this NPRM in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the RFA.

The RFA and Executive Order 13272 (67 FR 53461, August 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

PHMSA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. PHMSA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. PHMSA will consider all information and comments received in the public comment process when making a determination regarding the economic impact on small entities in the final rule.

Under the RFA at 5 U.S.C 603(b), each initial regulatory flexibility analysis is required to address the following topics:

(1) The reasons why the agency is considering the action.

(2) The objectives and legal basis for the proposed rule.

(3) The kind and number of small entities to which the proposed rule will apply.

(4) The projected reporting, recordkeeping and other compliance requirements of the proposed rule.

(5) All Federal rules that may duplicate, overlap, or conflict with the proposed rule.[83]

The RFA at 5 U.S.C. 603(c) requires that each initial regulatory flexibility analysis contains a description of any significant alternatives to the proposal that accomplish the statutory objectives and minimize the significant economic impact of the proposal on small entities. In this instance, none of the alternatives accomplish the statutory objectives and minimize the significant economic impact of the proposal on small entities.

(1) Reasons Why the Agency is Considering the Action

PHMSA is promulgating the NPRM in response to recent train accidents involving the derailment of HHFTs comprised of twenty rail carloads of a Class 3 flammable liquid. Shipments of large volumes of flammable liquids pose a significant risk to life, property, and the environment. For Example on December 30, 2013, a train carrying crude oil derailed and ignited near Casselton, North Dakota prompting authorities to issue a voluntary evacuation of the city and surrounding area. On November 8, 2013, a train carrying crude oil to the Gulf Coast from North Dakota derailed in Alabama, spilling crude oil in a nearby wetland and igniting into flames. On July 6, 2013, a catastrophic railroad accident occurred in Lac-Mégantic, Quebec, Canada when an unattended freight train containing hazardous materials rolled down a descending grade and subsequently derailed. The derailment resulted in a fire and multiple energetic ruptures of tank cars, which, along with other effects of the accident, caused the confirmed death of 47 people. In

[83] See: *http://www.fws.gov/policy/library/rgSBAGuide.pdf* (accessed September 28, 2011).

addition, this derailment caused extensive damage to the town center, clean-up costs, and the evacuation of approximately 2,000 people from the surrounding area. The Lac-Mégantic incident resulted in very large economic losses. PHMSA is taking this regulatory action to prevent accidents on the scale of that in Lac-Mégantic from happening in the United States.

(2) The Objectives and Legal Basis for the Proposed Rule

In this NPRM, PHMSA is proposing revisions to the HMR to ensure that the rail requirements address the risks posed by the transportation on railroads of HHFTs. This rulemaking addresses risks in three areas: (1) Proper classification and characterization of the product being transported, (2) operational controls to decrease the likelihood and consequences of train accidents, and (3) tank car integrity to decrease the consequences of train accidents. Promulgating this rulemaking in these areas is consistent with the goals of the HMR: (1) To ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) to provide effective communication to transportation workers and emergency responders of the hazardous materials being transferred; and (3) to minimize the consequences of an incident should one occur.

The Secretary has the authority to prescribe regulations for the safe transportation, including the security, of hazardous materials in intrastate, interstate, and foreign commerce (49 U.S.C. 5103(b)) and has delegated this authority to PHMSA. 49 CFR 1.97(b).

(3) A description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The universe of the entities considered in an IRFA generally includes only those small entities that can reasonably expect to be directly regulated by the proposed action. Small railroads and offerors are the types of small entities potentially affected by this proposed rule.

A ''small entity'' is defined in 5 U.S.C. 601(3) as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Title 49 U.S.C. 601(4) likewise includes within the definition of small entities non-profit enterprises that are independently owned and operated, and are not dominant in their field of operation.

The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a ''for-profit'' railroad business firm may be, and still be classified as a small entity, is 1,500 employees for ''line haul operating railroads'' and 500 employees for ''switching and terminal establishments.'' Additionally, 5 U.S.C. 601(5) defines as small entities governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final Statement of Agency Policy that formally establishes small entities or small businesses as being railroads, contractors, and hazardous materials offerors that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues,[84] and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003) (codified as appendix C to 49 CFR Part 209). The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. This definition is what PHMSA is proposing to use for the rulemaking.

Railroads

Not all small railroads would be required to comply with the provisions of this proposed rule. Most of the approximately 738 small railroads do not transport hazardous materials. Based on observations from FRA's regional offices, 64 small railroads could potentially be affected by this proposed rule because they transport HHFTs. Therefore, this proposed rule would impact a substantial number of small railroads.

Offerors

Almost all hazardous materials tank cars, including those cars that transport crude oil, ethanol, and other flammable liquids, are owned or leased by offerors. The proposed requirements for a testing and sampling program will directly affect shippers as they will now be required to create a document a sampling and testing program for mined gases and liquids. In addition, some of the other proposals in this rulemaking may indirectly affect offerors. DOT believes that a majority, if not all, of these offerors are large entities. DOT used data from the DOT/PHMSA Hazardous Materials Information System (HMIS) database to screen for offerors that may be small entities.

From the DOT/PHMSA HMIS database, and industry sources, DOT found 731 small offerors that might be impacted. Based on further information available on the companies' Web sites, all other offerors appear to be subsidiaries of large businesses. Out of these 731, however, only 297 own tank cars that would be affected. All the other 434 offerors either do not own tank cars or have tank cars that would not be affected by this proposed rule. Thus, DOT believes that there are only 297 offerors that are small businesses affected by this proposed rule. Additionally, no small offerors commented on PHMSA's ANPRM for this proceeding. PHMSA invites commenters to bring forth information that might assist it in assessing the number of small offerors that may be economically impacted by the requirement set forth in the proposed rule for development of the IRFA.

(4) A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule

For a thorough presentation of cost estimates, please refer to the RIA, which has been placed in the docket for this rulemaking.

This rulemaking has proposed requirements in three areas that address the potential risks: (1) Proper classification and characterization of the product being transported, (2) operational controls to decrease the likelihood of accidents, and (3) tank car integrity. Proposed requirements for braking, speed restrictions, and tank car production would not impact any small entities. Most small railroads affected by this proposed rule do not operate at speeds higher than those proposed for speed restrictions or travel long distances over which the reduced speed would cause a significant impact. Any small railroad that operates at speeds 30 mph or less would also not be impacted by the proposed braking requirement. Additionally, in a February 12, 2014, letter to the Secretary, ASLRRA announced that they recommend to their members to voluntarily operate unit trains of crude oil at a top speed of no more than 25 mph on all routes.

[84] For 2012 the Surface Transportation Board (STB) adjusted this amount to $36.2 million.

PHMSA believes that all offerors, both small and large, who would be required to select a car that complies with new construction requirements, would not see a significant increase in their lease rates. Lease rates are not expected to increase due to proposed improvements in the industry specification for tank car requirements as rates have already increased in recent years. . Additionally, also in the February 12th letter to the Secretary, the ASLRRA noted that it will support and encourage the development of new tank car standards including but not limited to adoption of a 9/16 inch tank car shell.

Proposed § 174.310(a)(3) would expand hazardous materials route planning and selection requirements for railroads. This would include HHFTs transporting flammable materials and, where technically feasible, require rerouting to avoid transportation of such hazardous materials through populated and other sensitive areas. Approximately 64 small railroads carry crude oil and ethanol in trains consists large enough that they would potentially be affected by this proposal. However, the majority of small railroads do not carry hazardous materials on a daily basis; in fact, some small railroads carry hazardous materials fewer than five times annually.

The affected Class III railroads are already compliant with the routing requirements established by HM–232E (71 FR 76834). In general, at the time that rule was promulgated, it was assumed that the small railroads, due to their limited size, would, on average, have no less than one and no more than two primary routes to analyze. Thus, the potential lack of an alternative route to consider would minimize the impact of this proposed requirement. Because the distance covered by the small railroads' routes is likely contained within a limited geographic region, the hours estimated for analyses are fewer than those estimated for the larger railroads.

Finally, this proposed rule would also require any offeror who offers a hazardous material for transportation to develop, implement, and update its sampling and testing programs related to classification and characterization of the hazardous material if it is a mined gas or liquid (e.g., crude oil). PHMSA believes that there would be an initial cost for each offeror of approximately $3,200 for the first year, and additional costs of $800 annually thereafter. PHMSA believes that this proposed section would not significantly burden any of these small entities.

PHMSA estimates the total cost to each small railroad to be $5,400 in the first year and $3,000 for subsequent years. Based on small railroads' annual operating revenues, these costs are not significant. Small railroads' annual operating revenues range from $3 million to $20 million. Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad is $47,000. Thus, the costs associated with this proposed rule amount to significantly less than one percent of the railroad's annual operating revenue. PHMSA realizes that some small railroads will have lower annual revenue than $4.7 million. However, PHMSA is confident that this total cost estimate to each small railroad provides a good representation of the small railroads, in general.

In conclusion, PHMSA believes that although some small railroads would be directly impacted, they would not be impacted significantly as the impact would amount to significantly less than one percent of a small railroad's annual operating revenue. Information available indicates that none of the offerors would be significantly affected by the burdens of the proposed rule, but seeks information and comments from the industry that might assist in quantifying the number of small offerors who may be economically impacted by the requirements set forth in the proposed rule. Therefore, these requirements will likely not have a significant economic impact on any small entities' operations. PHMSA seeks comments on these conclusions.

(5) An Identification, to the Extent Practicable, of All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

PHMSA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. PHMSA will work with and coordinate with FRA to ensure that we are aligned with EO 28 or other FRA actions to the greatest extent practicable. This proposed rule would support most other safety regulations for railroad operations.

This proposed rule will not have a noticeable impact on the competitive position of the affected small railroads or on the small entity segment of the railroad industry as a whole. The small entity segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as ''feeders'' to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for the larger railroads. They transport those cars over relatively short distances and then turn them over to the larger systems, which transport them relatively long distances to their ultimate destination, or for handoff back to a smaller railroad for final delivery. Although their relative interests do not always coincide, the relationship between the large and small entity segments of the railroad industry is more supportive and co-dependent than competitive.

It is also rare for small railroads to compete with each other. As mentioned above, small railroads generally serve smaller, lower density markets and customers. They tend to operate in markets where there is not enough traffic to attract or sustain rail competition, large or small. Given the significant capital investment required (to acquire right-of-way, build track, purchase fleet, etc.), new entry in the railroad industry is not a common occurrence. Thus, even to the extent the proposed rule may have an economic impact, it should have no impact on the intramodal competitive position of small railroads.

Even though PHMSA did not receive any comments on the ANPRM in opposition to PHMSA's preliminary finding that this rulemaking will not have a significant economic impact on a substantial number of small entities, PHMSA has not determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, PHMSA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. PHMSA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. PHMSA will consider all comments received in the public comment process when making a determination in the final RFA.

F. Paperwork Reduction Act

PHMSA will request a new information collection from the Office of Management and Budget (OMB) under OMB Control No. 2137–XXXX entitled ''Flammable Hazardous Materials by Rail Transportation.'' This NPRM may result in an increase in annual burden and costs under OMB Control No. 2137–XXXX due to proposed requirements pertaining to the creation of a sampling and testing program for mined gas or liquid and rail routing for HHFTs.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of Title 5 of

the CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

In addition to the requirements proposed in this NPRM, we request comment on whether PHMSA should require reporting of data on the total damages that occur as a result of train accidents involving releases of hazardous material, including damages related to fatalities, injuries, property damage, environmental damage and clean-up costs, loss of business and other economic activity, and evacuation-related costs. Currently, PHMSA only collects some of this information, and data verification is inconsistent. Further, we request comment on whether PHMSA should require reporting on every car carrying hazardous material that derails, whether that car loses product or not. Such reporting would assist PHMSA in assessing the effectiveness of different kinds of cars in containing the hazardous materials that they carry. PHMSA seeks comment on how hazardous incident reporting of rail accidents can be improved upon, in the context of this rule. How can PHMSA improve the data quality, utility, and response rates associated with reporting on the impacts of incidents associated with the transportation of hazardous materials on HHFTs? Are changes to the incident reporting forms or the method of collection warranted?

This document identifies a new information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule and specifically requests comments on the information collection and recordkeeping burdens associated with this NPRM.

Sampling and Testing Plans

PHMSA estimates that there will be approximately 1,538 respondents, based on a review of relevant active registrations on the PHMSA Hazmat Intelligence Portal, each submitting an average of one sampling and testing plan each year. First year hourly burden is estimated at 40 hours per response, or 61,520 burden hours; hourly burden for each subsequent year is estimated at 10 hours per response, or 15,380 burden hours. PHMSA assumes a Chemical Engineer is the labor category most appropriate to describe sampling methodologies, testing protocols, and present test results. The mean hourly wage for a Chemical Engineer was $46.02 in May 2013, according to the Bureau of Labor Statistics. We inflate this wage by 60 percent to account for fringe benefits and overhead of $27.61 per hour, for a total weighted hourly wage of $73.63, or $74.30 per hour after adjusting for growth in median real wages. At an average hourly cost of $74.30 per hour, first year burden cost for this proposed requirement is estimated at $4,570,936.00; burden cost for each subsequent year is estimated at $1,142,734.00.

Routing—Collection by Line Segment

PHMSA estimates that there will be approximately 74 respondents (10 for Class II Railroads; 64 for Class III Railroads) each submitting an average of one routing collection response each year, and each subsequent year. Hourly burden is assumed to be 40 hours per response, or 2,960 burden hours each year. PHMSA used a labor rate that combines two employee groups listed in the Bureau of Labor Statistics May 2012 Industry-Specific Occupational Employment and Wage Estimates: NAICS 482000-Rail Transportation occupational code 11–0000 ''Management Occupations'' and occupation code 43–6011 ''Executive Secretaries and Executive Administrative Assistants.'' A combination of these two groups will probably be utilized to perform the requirements in this proposed rule. The average annual wages for these groups are $100,820 and $54,520 respectively. The resulting average hourly wage rate, including a 60 percent increase to account for overhead and fringe benefits, is $67.96. At an average hourly cost of $67.96 per hour, burden cost for the first year and each subsequent year is estimated at $201,161.60.

Routing Security Analysis

For the first year, PHMSA estimates that there will be approximately 74 respondents (10 for Class II Railroads; 64 for Class III Railroads). Class II Railroads are expected to submit 50 routing security analysis responses per year, based on the number of feasible alternate routes to consider after future possible network changes, with each response taking approximately 80 hours each, or 4,000 hours. At an average hourly cost of $67.96 per hour, first year burden cost for Class II Railroads is estimated at $271,840.00. Class III Railroads are expected to submit 128 routing security analysis responses per year, with each response taking approximately 40 hours, or 5,120 hours. At an average hourly cost of $67.96 per hour, first year burden cost for Class III Railroads is estimated at $347,955.20.

PHMSA assumes that new route analyses are necessary each year based on changes in commodity flow, but that after the first year's route analyses are completed, analyses performed on the same routes in subsequent years will take less time. For each subsequent year, PHMSA estimates that there will be approximately 74 respondents (10 for Class II Railroads; 64 for Class III Railroads). Class II Railroads are expected to submit 50 routing security analysis responses per year, with each response taking approximately 16 hours each, or 800 hours. At an average hourly cost of $67.96 per hour, first year burden cost for Class II Railroads is estimated at $54,368.00. Class III Railroads are expected to submit 128 routing security analysis responses per year, with each response taking approximately 8 hours, or 1,024 hours. At an average hourly cost of $67.96 per hour, first year burden cost for Class III Railroads is estimated at $69,591.04.

Incident Reporting

From 2011–2014, PHMSA identified 32 incidents, for an average of 11 incidents per year, involving the derailment and release of crude oil/ethanol. Each report would be submitted by a single respondent and would take approximately 2 additional hours to submit per response, compared to the current requirements. At an average hourly cost of $67.96 per hour, burden cost is estimated at $1,495.12. We do not currently have sufficient data to estimate the number of respondents and responses that would be required if PHMSA extended incident reporting requirements to derailments not involving a product release.

Total

We estimate that the total information collection and recordkeeping burden for the requirements as specified in this proposed rule would be as follows:

OMB No. 2137–XXXX, ''Flammable Hazardous Materials by Rail Transportation''

First Year Annual Burden:
Total Annual Number of Respondents: 1,612.
Total Annual Responses: 1,801.
Total Annual Burden Hours: 73,622.
Total Annual Burden Cost: $5,393,387.92.
Subsequent Year Burden:
Total Annual Number of Respondents: 1,612.
Total Annual Responses: 1,801.
Total Annual Burden Hours: 20,186.
Total Annual Burden Cost: $1,469,349.76.

In addition to the Paperwork Reduction Act requirements outlined above, PHMSA seeks comment on whether any other provisions in this rule will result in additional information collection

requirements and/or burdens, including but not limited to: Notification to state emergency response commissions, and tank car design requirements.

Please direct your requests for a copy of the information collection to Steven Andrews or T. Glenn Foster, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), East Building, Office of Hazardous Materials Standards (PHH–12), 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone (202) 366–8553.

G. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. section 4321–4375), requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9.

1. Need for the Proposal

This NPRM is intended to address serious safety and environmental concerns revealed by various recent train accidents and incidents involving HHFTs. This NPRM is proposing requirements designed to lessen the frequency and consequences of train accidents involving the unintentional release flammable liquids in HHFTs. The growing reliance on trains to transport large volumes of flammable liquids, particularly crude oil and ethanol, poses a significant risk to life, property, and the environment. These significant risks have been highlighted by the recent instances of trains carrying crude oil that derailed in Casselton, North Dakota; Aliceville, Alabama; and Lac-Mégantic, Quebec, Canada and recent instances of trains carrying ethanol that derailed in Arcadia, Ohio and Cherry Valley, Illinois. The proposed changes also address NTSB recommendations on accurate classification, enhanced tank cars, rail routing, and oversight.

2. Alternatives to the Proposed Action

In proposing this NPRM, PHMSA is considering the following alternatives:

1. No Action Alternative—If PHMSA chose this alternative, it would not proceed with any rulemaking on this subject, and the current regulatory standards would remain in effect.

2. Preferred Alternative—This alternative is the current proposal as it appears in this NPRM. The proposed amendments are more fully addressed in the preamble and regulatory text sections. However, they generally include:

a. New defined term of ''High-hazard flammable train;''

b. Rail Routing requirements as specified in Part 172, Subpart I of the HMR;

c. Sampling and testing program to ensure proper classification and characterization;

d. Notification to SERCs or other appropriate state delegated entity, of petroleum crude oil train transportation;

e. Phase in requirements for updated braking devices and braking systems;

f. Speed restrictions for rail cars that do not meet the safer DOT Specification 117 standard (In this NPRM we proposed three alternatives for differing levels of speed restrictions for trains that do not meet the DOT Specification 117); and

g. Phase out DOT 111 cars in HHFTs and require DOT Specification 117 for such train sets (In this NPRM we proposed three alternatives tank car design of the proposed DOT Specification 117).

3. The Alternative Proposed in the ANPRM—This alternative includes the following substantive provisions as proposed in the ANPRM:

a. Relax regulatory requirements to afford the FRA greater discretion to authorize the movement of non-conforming tank cars;

b. Impose additional requirements that would correct an unsafe condition associated with pressure relief valves (PRV) on rail cars transporting carbon dioxide, refrigerated liquid;

c. Relax regulatory requirements applicable to the repair and maintenance of DOT Specification 110, DOT Specification 106, and ICC 27 tank car tanks (ton tanks);

d. Relax regulatory requirement for the removal of rupture discs for inspection if the removal process would damage, change, or alter the intended operation of the device; and

e. Impose additional requirements that would enhance the standards for DOT Specification 111 tank cars used to transport Packing Group (PG) I and II hazardous materials.

3. Probable Environmental Impacts of the Proposed Action and Alternatives

1. No-Action Alternative

If PHMSA were to select the no-action alternative, current regulations would remain in place, and no new provisions would be added. However, the safety and environmental threats that result from the increasing use of HHFTs would not be addressed. The existing threat of derailment and resulting fire, as exhibited in serious accidents like Lac-Mégantic, Quebec, which resulted in 47 fatalities, and Aliceville, Alabama, where we estimate that 630,000 gallons of crude oil entered navigable waters, destroying a significant area of wetland and forest, would continue. Clean-up is ongoing for both of these accidents.

2. Preferred Alternative

If PHMSA selects the provisions as proposed in this NPRM, PHMSA believes that safety and environmental risks would be reduced and that protections to human health and environmental resources would be increased.

The proposed application of the existing rail routing requirements to HHFTs would require that rail carriers consider safety and security risk factors such as population density along the route; environmentally-sensitive or significant areas; venues along the route (stations, events, places of congregation); emergency response capability along the route; etc., when analyzing and selecting routes for those trains. PHMSA believes that the use of routes that are less sensitive could mitigate the safety and environmental consequences of a train accident and release, were one to occur. It is possible that this requirement could cause rail carriers to choose routes that are less direct based on these concerns, potentially increasing the emission of greenhouse gases. However, PHMSA believes that the reduction in risk to sensitive areas outweighs a slight increase in greenhouse gases.

Next, the sampling and testing proposal is intended to ensure that each material is properly classified to ensure that: (1) The proper regulatory requirements are applied to each shipment to minimize the risk of incident, (2) first responders have accurate information in the event of a train accident, and (3) the characteristics of the material are known and fully considered so that offerors and carriers are aware of and can mitigate potential threats to the integrity of rail tank cars. PHMSA believes that this provision will reduce the risk of release of these materials.

PHMSA is proposing to require railroads that operate trains containing one million gallons of Bakken crude oil to notify SERCs or other appropriate state delegated entity about the operation of these trains through their

States. Railroads must identify each county, or a particular state or commonwealth's equivalent jurisdiction in the state through which the trains will operate. PHMSA believes that the notification will allow communities to better prepare and work with the railroads to ensure that resources are in place to respond to a spill that could affect water and environmental resources. As a result, responders can better mitigate a spill that has entered navigable waters by preventing further spread of the oil. This prevents further damage to drinking water resources and wildlife habitat.

PHMSA believes that the proposed braking and speed restrictions, especially for older DOT Specification 111 tank cars, will reduce the likelihood of train accidents and resulting release of flammable liquids. PHMSA also believes that the braking requirements could improve fuel efficiency, thereby reducing greenhouse gas emissions. Additionally, system wide implementation of ECP brakes, as proposed for a DOT Specification 117 manufactured under tank car Option 1, would improve the efficiency of the rail system by permitting trains to run closer together because of the improved performance of the brake system.

PHMSA believes that the phasing out of DOT Specification 111 tank cars in HHFTs would reduce risk of release because of the improved integrity and safety features of the proposed DOT Specification 117 and 117P. The DOT Specification 117 will provide bottom outlet protection and a robust top fitting protection structure. To improve integrity and puncture resistance of the tank, DOT Specification 117 has a full-height ½ inch minimum thickness head shield, an 11-gauge jacket, and, based on the Option, either a 7/16 inch or 9/16 inch shell and head thickness in comparison to DOT Specification 111, which has no head shield, or jacket requirement and is constructed with a 7/16 inch thick shell.

The proposed DOT Specification 117 tank car must have a thermal protection system, capable of surviving a 100-minute pool fire after a train accident. The 100-minute survivability period is intended to provide emergency responders time to assess an accident, establish perimeters, and evacuate the public as needed, while permitting hazardous material to be vented from the tank to prevent a violent failure of the tank car. This thermal protection is critical in limiting human health risks to the public and first responders and limiting environmental damage in the event of a train accident. The introduction of the new DOT Specification 117 and 117P, along with the gradual phase out of the DOT Specification 111 used in HHFTs will result in increased manufacture of new tank cars. While the gradual nature of the phase out is intended to decrease burden on the rail industry, increased manufacture could result in greater release of greenhouse gases and use of resources needed to make the cars, such as steel. However, PHMSA believes that these possible risks are far outweighed by the increased safety and integrity of each railcar and each train and the decreased risk of release of these fossil fuels to the environment.

3. ANPRM Alternative

If PHMSA were to select the provisions as proposed in the ANPRM, PHMSA believes that the significant safety risks that have recently come to light resulting from HHFTs would not be fully addressed. While the ANPRM proposed safety enhancements to DOT Specification 111 tank cars, public comments and current events have led PHMSA to believe that the gradual phase-out of the tank car in HHFT service is a more prudent alternative to improve safety. The ANPRM also sought comment on certain speed restrictions and braking equipment, which was helpful to PHMSA in drafting the current proposal.

The ANPRM also sought comment on various matters that are not directly related to the increasing threats described in this document and will be addressed at another time as those provisions do not address the modified purpose and need of this rulemaking.

Agencies Consulted

PHMSA worked closely with the FRA, EPA, and DHS/TSA in the development of this proposed rulemaking for technical and policy guidance. PHMSA also considered the views expressed in comments to the ANPRM submitted by members of the public, state and local governments, and industry.

Conclusion

The provisions of this proposed rule build on current regulatory requirements to enhance the transportation safety and security of shipments of hazardous materials transported by rail, thereby reducing the risks of an accidental or intentional release of hazardous materials and consequent environmental damage. PHMSA believes the net environmental impact will be positive. PHMSA believes that there are no significant environmental impacts associated with this proposed rule.

PHMSA welcomes any views, data, or information related to environmental impacts that may result if the proposed requirements are adopted, as well as possible alternatives and their environmental impacts.

H. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement, published in the **Federal Register** on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html.*

I. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, regulatory approaches developed through international cooperation can provide equivalent protection to standards developed independently while also minimizing unnecessary differences.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609

and PHMSA's obligations under the Trade Agreement Act, as amended.

PHMSA welcomes any data or information related to international impacts that may result if the petitions and recommendations are adopted, as well as possible alternatives and their international impacts. Please describe the impacts and the basis for the comment.

J. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The proposed changes in this rule address safety and security vulnerabilities regarding the transportation of hazardous materials in commerce.

K. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Rail carriers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

In consideration of the foregoing, we are proposing to amend title 49, chapter I, subchapter C, as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 2. In § 171.7, revise paragraphs (k)(2) through (4), and add paragraph (k)(5) to read as follows:

§ 171.7 Reference material.

* * * * *

(k) * * *

(1) * * *

(2) AAR Manual of Standards and Recommended Practices, Section C—III, Specifications for Tank Cars, Specification M–1002 (AAR Specifications for Tank Cars), Appendix E, April 2010; into §§ 179.203–9; 179.203–11(f); 179.204–9; 179.204–11(f).

(3) AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, 1988, into § 174.55; 174.63.

(4) AAR Specifications for Design, Fabrication and Construction of Freight Cars, Volume 1, 1988, into § 179.16.

(5) AAR Standard 286; AAR Manual of Standards and Recommended Practices, Section C, Car Construction Fundamentals and Details, Standard S–286, Free/Unrestricted Interchange for 286,000 lb Gross Rail Load Cars (Adopted 2002; Revised: 2003, 2005, 2006), into § 179.13.

* * * * *

■ 3. In § 171.8 a definition for ''High-hazard flammable train'' is added in alphabetical order to read as follows:

§ 171.8 Definitions.

* * * * *

High-hazard flammable train means a single train carrying 20 or more carloads of a Class 3 flammable liquid.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81 and 1.97.

■ 5. In § 172.820, paragraph (a)(4) is added to read as follows:

§ 172.820 Additional planning requirements for transportation by rail.

(a) * * *

(4) A high-hazard flammable train as defined in § 171.8 of this subchapter.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 6. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 7. Add new § 173.41 to subpart B to read as follows:

§ 173.41 Sampling and testing program for mined gas and liquid.

(a) *General.* Mined gases and liquids, such as petroleum crude oil, extracted from the earth and offered for transportation must be properly classed and characterized as prescribed in § 173.22, in accordance with a sampling and testing program which specifies at a minimum:

(1) A frequency of sampling and testing that accounts for appreciable variability of the material, including the time, temperature, method of extraction (including chemical use), and location of extraction;

(2) Sampling at various points along the supply chain to understand the variability of the material during transportation;

(3) Sampling methods that ensure a representative sample of the entire mixture, as packaged, is collected;

(4) Testing methods that enable complete analysis, classification, and characterization of the material under the HMR.

(5) Statistical justification for sample frequencies;

(6) Duplicate samples for quality assurance purposes; and

(7) Criteria for modifying the sampling and testing program.

(b) *Certification.* Each person who offers a hazardous material for transportation shall certify, as prescribed by § 172.204 of this subchapter, that the material is offered for transportation in accordance with this subchapter, including the requirements prescribed by paragraph (a) of this section.

(c) *Documentation, retention, review, dissemination of program.* The sampling and testing program must be documented in writing and must be retained for as long as it remains in effect. The sampling and testing

program must be reviewed at least annually and revised and/or updated as necessary to reflect changing circumstances. The most recent version of the sampling and testing program, or relevant portions thereof, must be available to the employees who are responsible for implementing it. When the sampling and testing program is updated or revised, all employees responsible for implementing it must be notified, and all copies of the sampling and testing program must be maintained as of the date of the most recent revision.

(d) *Access by DOT to copy of program documentation.* Each person required to develop and implement a sampling and testing program must maintain a copy of the sampling and testing program documentation (or an electronic file thereof) that is accessible at, or through, its principal place of business, and must make the documentation available upon request at a reasonable time and location to an authorized official of the Department of Transportation.

■ 8. In § 173.241, revise paragraph (a) to read as follows:

§ 173.241 Bulk packagings for certain low-hazard liquid and solid materials.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, 117, or 120 tank car tanks; Class 106 or 110 multi-unit tank car tanks; and AAR Class 203W, 206W, and 211W tank car tanks. Additional operational requirements apply to high-hazard flammable trains (see § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Notwithstanding the tank car specifications prescribed in this section, DOT Specification 111 tank cars are no longer authorized for Class 3 (flammable liquids) in Packing Group III for use in high-hazard flammable train service, after October 1, 2020.

* * * * *

■ 9. In § 173.242 revise paragraph (a) to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, 117, or 120 tank car tanks; Class 106 or 110 multi-unit tank car tanks and AAR Class 206W tank car tanks. Additional operational requirements apply to high-hazard flammable trains (see § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Notwithstanding the tank car specifications prescribed in this section, DOT Specification 111 tank cars are no longer authorized for use in high-hazard flammable train service, based on packing group, after the following dates:

Packing group	DOT 111 not authorized after
II	October 1, 2018.
III	October 1, 2020.

* * * * *

■ 10. In § 173.243 revise paragraph (a) to read as follows:

§ 173.243 Bulk packaging for certain high-hazard liquids and dual-hazard materials that pose a moderate hazard.

* * * * *

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, 117, or 120 fusion-welded tank car tanks; and Class 106 or 110 multi-unit tank car tanks. Additional operational requirements apply to high-hazard flammable trains (see § 171.8 of this subchapter) as prescribed in § 174.310 of this subchapter. Notwithstanding the tank car specifications prescribed in this section, DOT Specification 111 tank cars are no longer authorized for Class 3 (flammable liquids) in Packing Group I for use in high-hazard flammable train service, after October 1, 2017.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 11. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 12. Add new § 174.310 to subpart G to read as follows:

§ 174.310 Requirements for the operation of high-hazard flammable trains.

(a) *General.* Each rail carrier operating a high-hazard flammable train (as defined in § 171.8 of this subchapter) must comply with each of the following additional safety requirements with respect to each high-hazard flammable train that it operates:

(1) *Routing.* The additional planning requirements for transportation by rail in accordance with part 172, subpart I of this subchapter;

(2) *Notification to State Emergency Response Commissions of petroleum crude oil train transportation.* (i) Any railroad transporting in a single train 1,000,000 gallons or more of UN 1267, Petroleum crude oil, Class 3, as described by § 172.101 of this subchapter and sourced from the Bakken shale formation in the Williston Basin (North Dakota, South Dakota, and Montana in the United States, or Saskatchewan or Manitoba in Canada), must, within 30 days of [EFFECTIVE DATE OF FINAL RULE], provide notification to the State Emergency Response Commission (SERC) or other appropriate state delegated entities in which it operates. Information required to be shared with SERCs or other appropriate state delegated entity must consist of the following:

(A) A reasonable estimate of the number of affected trains that are expected to travel, per week, through each county within the State;

(B) The routes over which the affected trains will be transported;

(C) A description of the petroleum crude oil and applicable emergency response information required by subparts C and G of part 172 of this subchapter; and,

(D) At least one point of contact at the railroad (including name, title, phone number and address) responsible for serving as the point of contact for the State Emergency Response Commission and relevant emergency responders related to the railroad's transportation of affected trains.

(ii) Railroads shall update notifications made under paragraph (a) of this section prior to making any material changes in the estimated volumes or frequencies of trains traveling through a county.

(iii) Copies of railroad notifications to State Emergency Response Commissions made under paragraph (a) of this section must be made available to FRA upon request.

(3) *Speed restrictions.* All trains are limited to a maximum speed of 50 mph. In addition, the following restrictions apply:

(i) Option 1—The train is further limited to a maximum speed of 40 mph, unless all tank cars containing a flammable liquid meet or exceed the standard for the DOT Specification 117 tank car provided in part 179, subpart D of this subchapter;

(ii) Option 2—The train is further limited to a maximum speed of 40 mph while operating in an area, determined by census population data, that has a population of more than 100,000 people, unless all tank cars containing a flammable liquid meet or exceed the standard for the DOT Specification 117 tank car provided in part 179, subpart D of this subchapter; and

(iii) Option 3—The train is further limited to a maximum speed of 40 mph while that train travels within the limits of high-threat urban areas (HTUAs) as defined in § 1580.3 of this title, unless all tank cars containing a flammable liquid meet or exceed the standard for the DOT Specification 117 tank car provided in part 179, subpart D of this subchapter.

(iv) The train is further limited to a maximum speed of 30 mph, unless it conforms with paragraph (a)(4) of this section.

(4) *Braking.* (i) The train must be equipped and operated with either a two-way end of train device, as defined in § 232.5 of this title, or a distributed power (DP) system, as defined in § 229.5 of this title.

(ii) After October 1, 2015, a train comprised entirely of tank cars manufactured in accordance with proposed § 179.202 or the performance specification prescribed in § 179.202–11 (Option 1 only), except for required buffer cars, must be operated in ECP brake mode as defined by 49 CFR 232.5.

(5) *Tank cars manufactured after October 1, 2015.* (i) A tank car manufactured for use in a HHFT after October 1, 2015 must meet DOT Specification 117, in part 179, subpart D of this subchapter.

(ii) A tank car manufactured for use in a HHFT after October 1, 2015, in accordance with proposed § 179.202 or the performance specification prescribed in § 179.202–11 (Option 1), must be equipped with ECP brakes in accordance with subpart G of part 232 of this title.

(b) [Reserved]

PART 179—SPECIFICATIONS FOR TANK CARS

■ 13. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

Subpart D–Specifications for Non-Pressure Tank Car Tanks (Classes DOT–111AW, 115AW, and 117AW)

Option 1

■ 14. Add §§ 179.202 through 179.202–11 to subpart D of part 179, to read as follows:

§ 179.202 Individual specification requirements applicable to DOT–117 tank car tanks.

§ 179.202–1 Applicability.

Each tank built under these specifications must conform to either the requirements of §§ 179.202–1 through 179.202–10, or the performance standard requirements of § 179.202–11.

§ 179.202–3 Type.

(a) *General.* The tank car must either be designed to the DOT 117 specification in § 179.202 or conform to the performance specification prescribed in § 179.202–11.

(b) *Approval.* The tank car design must be approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, FRA, 1200 New Jersey Ave. SE., Washington, DC 20590, and must be constructed to the conditions of that approval in accordance with § 179.13.

(c) *Design.* The design must meet the individual specification requirements of § 179.202.

§ 179.202–4 Thickness of plates.

The wall thickness after forming of the tank shell and heads must be, at a minimum, 9/16 of an inch AAR TC–128 Grade B, in accordance with § 179.200–7(b).

§ 179.202–5 Tank head puncture resistance system.

The DOT 117 specification tank car must have a tank head puncture resistance system. The full height head shields must have a minimum thickness of ½ inch.

§ 179.202–6 Thermal protection systems.

The DOT 117 specification tank car must have a thermal protection system. The thermal protection system must be designed in accordance with § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

§ 179.202–7 Jackets.

The entire thermal protection system must be covered with a metal jacket of a thickness not less than 11 gauge A1011 steel or equivalent; and flashed around all openings so as to be weather tight. The exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket must be given a protective coating.

§ 179.202–8 Bottom outlets.

If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

§ 179.202–9 Top fittings protection.

The DOT 117 tank car must be equipped with a top fittings protection system and a nozzle capable of sustaining, without failure, a rollover accident at a speed of 9 miles per hour, in which the rolling protective housing strikes a stationary surface assumed to be flat, level, and rigid and the speed is determined as a linear velocity, measured at the geometric center of the loaded tank car as a transverse vector. Failure is deemed to occur when the deformed protective housing contacts any of the service equipment or when the tank lading retention capability is compromised (e.g., leaking).

§ 179.202–10 DOT 117 design.

The following is an overview of design requirements for a DOT Specification 117 tank car.

DOT specification	Insulation	Bursting pressure (psig)	Minimum plate thickness (Inches)	Test pressure (psig)	Bottom outlet
117A100W	Optional	500	9/16	100	Optional.

§ 179.202–11 Performance standard requirements.

(a) *Approval.* Design, testing, and modeling results must be reviewed and approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration (FRA), 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) *Approval to operate at 286,000 gross rail load (GRL).* In addition to the requirements of paragraph (a) of this section, the tank car design must be approved, and the tank car must be constructed to the conditions of an approval issued by the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, in accordance with § 179.13.

(c) *Puncture resistance.*

(1) Minimum side impact speed: 12 mph when impacted at the longitudinal and vertical center of the shell by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(2) Minimum head impact speed: 18 mph when impacted at the center of the head by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(d) *Thermal protection systems.* The tank car must be equipped with a thermal protection system. The thermal protection system must be designed in accordance with § 179.18 and include a

reclosing pressure relief device in accordance with § 173.31 of this subchapter.

(e) *Bottom outlet.* If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

(f) *Top fittings protection*—(1) *New construction.* Tank car tanks must be equipped with a top fittings protection system and a nozzle capable of sustaining, without failure, a rollover accident at a speed of 9 miles per hour, in which the rolling protective housing strikes a stationary surface assumed to be flat, level, and rigid and the speed is determined as a linear velocity, measured at the geometric center of the loaded tank car as a transverse vector. Failure is deemed to occur when the deformed protective housing contacts any of the service equipment or when the tank car lading retention capability is compromised (e.g., leaking).

(2) *Existing tank cars.* Existing tank car tanks may continue to rely on the equipment installed at the time of manufacture.

Option 2

■ 15. Add §§ 179.203 through 179.203–11 to subpart D of part 179, to read as follows:

§ 179.203 Individual specification requirements applicable to DOT–117 tank car tanks.

§ 179.203–1 Applicability.

Each tank built under these specifications must conform to either the requirements of §§ 179.203 through 179.203–10, or the performance standard requirements of § 179.203–11.

§ 179.203–3 Type.

(a) *General.* The tank car must either be designed to the DOT 117 specification or conform to the performance specification prescribed in § 179.203.

(b) *Approval.* The tank car design must be approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, FRA, 1200 New Jersey Ave. SE., Washington, DC 20590, and must be constructed to the conditions of that approval in accordance with § 179.13.

(c) *Design.* The design must meet the individual specification requirements of § 179.203.

§ 179.203–4 Thickness of plates.

The wall thickness after forming of the tank shell and heads must be, at a minimum, 9⁄16 of an inch AAR TC–128 Grade B, in accordance with § 179.200–7(b).

§ 179.203–5 Tank head puncture resistance system.

The DOT 117 specification tank car must have a tank head puncture resistance system. The full height head shields must have a minimum thickness of ½ inch.

§ 179.203–6 Thermal protection systems.

The DOT 117 specification tank car must have a thermal protection system. The thermal protection system must be designed in accordance with § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

§ 179.203–7 Jackets.

The entire thermal protection system must be covered with a metal jacket of a thickness not less than 11 gauge A1011 steel or equivalent; and flashed around all openings so as to be weather tight. The exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket must be given a protective coating.

§ 179.203–8 Bottom outlets.

If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

§ 179.203–9 Top fittings protection.

The tank car tank must be equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter).

§ 179.203–10 DOT 117 design.

The following is an overview of design requirements for a DOT Specification 117 tank car.

DOT specification	Insulation	Bursting pressure (psig)	Minimum plate thickness (inches)	Test pressure (psig)	Bottom outlet
117A100W	Optional	500	9/16	100	Optional.

§ 179.203–11 Performance standard requirements.

(a) *Approval.* Design, testing, and modeling results must be reviewed and approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration (FRA), 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) *Approval to operate at 286,000 gross rail load (GRL).* In addition to the requirements of paragraph (a) of this section, the tank car design must be approved, and the tank car must be constructed to the conditions of an approval issued by the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, in accordance with § 179.13.

(c) *Puncture resistance.*

(1) Minimum side impact speed: 12 mph when impacted at the longitudinal and vertical center of the shell by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(2) Minimum head impact speed: 18 mph when impacted at the center of the head by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(d) *Thermal protection systems.* The tank car must be equipped with a thermal protection system. The thermal protection system must be designed in accordance with § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

(e) *Bottom outlet.* If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

(f) *Top fittings protection.*

(1) *New construction.* The tank car tank must be equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter).

(2) *Existing tank cars.* Existing tank car tanks may continue to rely on the equipment installed at the time of manufacture.

Option 3

■ 16. Add §§ 179.204 through 179.204–11 to subpart D of part 179, to read as follows:

§ 179.204 Individual specification requirements applicable to DOT–117 tank car tanks.

§ 179.204–1 Applicability.

Each tank built under these specifications must conform to either the requirements of §§ 179. 204–1 through 179.204–10, or the performance standard requirements of § 179.204–11.

§ 179.204–3 Type.

(a) *General.* The tank car must either be designed to the DOT 117 specification or conform to the performance specification prescribed in § 179.204–11.

(b) *Approval.* The tank car design must be approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, FRA, 1200 New Jersey Ave. SE., Washington, DC 20590, and must be constructed to the conditions of that approval in accordance with § 179.13.

(c) *Design.* The design must meet the individual specification requirements of § 179.204.

§ 179.204–4 Thickness of plates.

The wall thickness after forming of the tank shell and heads must be, at a minimum, 7/16 of an inch AAR TC–128 Grade B, in accordance with § 179.200–7(b).

§ 179.204–5 Tank head puncture resistance system.

The DOT 117 specification tank car must have a tank head puncture resistance system. The full height head shields must have a minimum thickness of ½ inch.

§ 179.204–6 Thermal protection systems.

The DOT 117 specification tank car must have a thermal protection system. The thermal protection system must be designed in accordance with § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

§ 179.204–7 Jackets.

The entire thermal protection system must be covered with a metal jacket of a thickness not less than 11 gauge A1011 steel or equivalent; and flashed around all openings so as to be weather tight. The exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket must be given a protective coating.

§ 179.204–8 Bottom outlets.

If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

§ 179.204–9 Top fittings protection.

The tank car tank must be equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter).

§ 179.204–10 DOT 117 design.

The following is an overview of design requirements for a DOT Specification 117 tank car.

DOT specification	Insulation	Bursting pressure (psig)	Minimum plate thickness (inches)	Test pressure (psig)	Bottom outlet
117A100W ...	Optional	500	7/16	100	Optional.

§ 179.204–11 Performance standard requirements.

(a) *Approval.* Design, testing, and modeling results must be reviewed and approved by the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration (FRA), 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) *Approval to operate at 286,000 gross rail load (GRL).* In addition to the requirements of paragraph (a) of this section, the tank car design must be approved, and the tank car must be constructed to the conditions of an approval issued by the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, in accordance with § 179.13.

(c) *Puncture resistance.*

(1) Minimum side impact speed: 9 mph when impacted at the longitudinal and vertical center of the shell by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(2) Minimum head impact speed: 17 mph when impacted at the center of the head by a rigid 12-inch by 12-inch indenter with a weight of 286,000 pounds.

(d) *Thermal protection systems.* The tank car must be equipped with a thermal protection system. The thermal protection system must be designed in accordance with § 179.18 and include a reclosing pressure relief device in accordance with § 173.31 of this subchapter.

(e) *Bottom outlet.* If the tank car is equipped with a bottom outlet, the handle must be removed prior to train movement or be designed with protection safety system(s) to prevent unintended actuation during train accident scenarios.

(f) *Top fittings protection.*

(1) *New construction.* The tank car tank must be equipped per AAR Specifications Tank Cars, appendix E paragraph 10.2.1 (IBR, see § 171.7 of this subchapter).

(2) *Existing tank cars.* Existing tank car tanks may continue to rely on the equipment installed at the time of manufacture.

Issued in Washington, DC, on July 23, 2014, under authority delegated in 49 CFR 1.97.

Anthony R. Foxx,

Secretary of Transportation.

[FR Doc. 2014–17764 Filed 7–31–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 130 and 174

[Docket No. PHMSA–2014–0105 (HM–251B)]

RIN 2137–AF08

Hazardous Materials: Oil Spill Response Plans for High-Hazard Flammable Trains

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: PMHSA is issuing this ANPRM in conjunction with a notice of proposed rulemaking (NPRM)—Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (2137–AE91), which PHMSA is also publishing today. In this ANPRM, PHMSA, in consultation with the Federal Railroad Administration (FRA), seeks comment on potential revisions to its regulations that would expand the applicability of comprehensive oil spill response plans (OSRPs) to high-hazard

flammable trains (HHFTs) based on thresholds of crude oil that apply to an entire train consist.

DATES: Comments must be received by September 30, 2014.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2014–0105 (HM–251B) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office located at U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Privacy Act: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely filed comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

FOR FURTHER INFORMATION CONTACT: Rob Benedict, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; Karl Alexy, (202) 493–6245, Office of Safety Assurance and Compliance, Federal Railroad Administration; or Roberta Stewart, (202) 493–1345, Office of Chief Counsel, Federal Railroad Administration.

SUPPLEMENTARY INFORMATION:

Background

The Federal Water Pollution Control Act (FWPCA) as amended by the Oil Pollution Act of 1990 (OPA), directs the President, at section 311(j)(1)(C) (33 U.S.C. 1321(j)(1)(C)) and section 311(j)(5) (33 U.S.C. 1321(j)(5)), respectively, to issue regulations ''establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil [1] and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.'' OPA directs the President to issue regulations requiring owners and operators of certain vessels and onshore and offshore oil facilities to develop, submit, update and in some cases obtain approval of OSRPs. 33 U.S.C. 1321(j)(5), Pub. L. 101–380 (1990). The authority to regulate transportation-related onshore facilities (i.e., motor carriers and railways) was later delegated to PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA).

On June 17, 1996, RSPA published a final rule issuing requirements that meet the intent of the FWPCA (61 FR 30533). This rule adopted requirements for packaging, communication, spill response planning, and response plan implementation intended to prevent and contain spills of oil during transportation. Regarding spill response planning, a basic OSRP is required for oil shipments in a packaging having a capacity of 3,500 gallons or more and a comprehensive OSRP is required for oil shipments in a package containing more than 42,000 gallons (1,000 barrels).

RSPA clarified that the purpose of an OSRP is to ensure that personnel are trained and available and equipment is in place to respond to an oil spill, and that procedures are established before a spill occurs, so that required notifications and appropriate response actions will follow quickly when there is a spill. Neither the basic nor the comprehensive OSRP is required to address response on a vehicle- or location-specific basis. A nationwide, regional or other generic plan is acceptable, provided that it covers the range of spill scenarios that the owner or operator foreseeably could encounter. Thus, scenarios ranging from a minor discharge to a ''worst-case discharge,'' must be addressed, as well as the range of topographical and climatological conditions the owner or operator may face. The OSRP also must describe the response when the discharge results from, or is accompanied by, a complicating condition, such as explosion or fire. RSPA outlined that a comprehensive OSRP must, at a minimum, address the following:

(1) Range of response scenarios that foreseeably could occur;

(2) Qualified individual, the alternate qualified individual, and all other personnel with a role in spill response;

(3) Training, including drills, required for each of these persons;

(4) Equipment necessary for response to the maximum extent practicable in each of the identified scenarios;

(5) Means by which the availability of personnel and equipment will be ensured to respond to a spill to the maximum extent practicable;

(6) Governmental officials and others to be notified in the event of a spill, and the notification procedure to be followed;

(7) Means for communicating among responsible personnel and between personnel and officials during a response; and

(8) Procedures to be followed during a response.

The following table outlines the specific differences between a basic and comprehensive OSRP. The shaded rows of the table indicate requirements that are not part of the basic OSRP, but are included in the comprehensive OSRP.

[1] For purposes of 49 CFR Part 130, *oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with the wastes other than dredged spoil. 49 CFR 130.5. This includes non-petroleum oil such as animal fat, vegetable oil, or other non-petroleum oil. Ethanol is not included in this definition.

Table 2: Comparison of Basic and Comprehensive OSRPs by Requirement			
Category	Requirement	Type of OSRP	
		Basic	Comprehensive
Preparation	Sets forth the manner of response to a discharge.	Yes	Yes
Preparation	Accounts for the maximum potential discharge of the packaging.	Yes	Yes
Personnel / Equipment	Identifies private personnel and equipment available for response.	Yes	Yes
Personnel / Coordination	Identifies appropriate persons and agencies (including telephone numbers) to be contacted, including the NRC.	Yes	Yes
Documentation	Is kept on file at the principal place of business and at the dispatcher's office.	Yes	Yes
Coordination	Reflects the requirements of the National Contingency Plan (40 CFR Part 300) and Area Contingency Plans.	No	Yes
Personnel / Coordination	Identifies the qualified individual with full authority to implement removal actions, and requires immediate communications between the individual and the appropriate Federal official and the persons providing spill response personnel and equipment.	No	Yes
Personnel / Equipment / Coordination	Identifies and ensures by contract or other means the availability of, private personnel, and the equipment necessary to remove, to the maximum extent practicable, a worst-case discharge (including that resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge.	No	Yes
Training	Describes the training, equipment, testing, periodic unannounced drills, and response actions of personnel, to be carried out under the plan to ensure safety and to mitigate or prevent discharge or the substantial threat of such a discharge.	No	Yes
Documentation	Is submitted (and resubmitted in the event of a significant change), to the Administrator of FRA.	No	Yes

Request for Public Comment

As discussed above, we believe that most, if not all, of the rail community transporting oil, including crude oil transported as a hazardous material, is subject to the basic OSRP requirement of 49 CFR 130.31(a), based on the understanding that most, if not all, rail tank cars being used to transport crude oil have a capacity greater than 3,500 gallons. However, a comprehensive OSRP for shipment of oil is only required when the oil is in a quantity greater than 42,000 gallons per package. Accordingly, the number of railroads required to have a comprehensive OSRP is much lower, or possibly non-existent, because a very limited number of rail tank cars in use would be able to transport a volume of 42,000 gallons in a single package.[2]

In setting the current OSRP threshold quantities, RSPA relied on the FWPCA mandate for regulations requiring a comprehensive OSRP to be prepared by an owner or operator of an onshore facility that, ''because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone.'' 33 U.S.C. 1321(j)(5)(C)(iv). For a more detailed discussion of RSPA's codification of the OSRP requirements into the HMR and the corresponding mandates from the FWPCA which were the baseline for such regulations, see the background section of RSPA's June 17, 1996, final rule (61 FR 30532). In that final rule, RSPA discussed a 1,000,000-gallon threshold that would apply to

[2] The 2014 AAR's Universal Machine Language Equipment Register (UMLER) numbers showed 5 tank cars listed with a capacity equal to or greater than 42,000 gallons, and none of these cars were being used to transport oil or petroleum products.

shipments rather than packages as an option. Specifically, RSPA stated,

> Conversely, the 1,000,000-gallon threshold adopted by EPA [Environmental Protection Agency] is contingent on several factors, including restrictive provisions that the facility may not transfer oil over water to or from vessels and that the facility's proximity to a public drinking water intake must be sufficiently distant to assure that the intake would not be shut down in the event of a discharge. Further, the EPA threshold refers to the capacity not of a single fixed storage tank, but of the entire facility, including barrels and drums stored at the facility. In summary, this example also is not analogous to hazards routinely encountered during transportation by railway and highway.
>
> During the June 28, 1993 public meeting, the ''substantial harm'' threshold was discussed at length, but participants did not agree on what volume of oil reasonably could cause substantial harm to the marine environment. Also, the 42,000-gallon threshold is supported by a number of comments to the docket citing its use by the EPA in related sections of the Code of Federal Regulations. Consequently, RSPA believes its determination to use a threshold value of 42,000 gallons in a single packaging is appropriate and reasonable.

In the past, and in the absence of agreement among participants in the rulemaking process on a volume of oil that could reasonably be expected to cause substantial harm to the environment, we stated that 42,000 gallons in a single packaging is a reasonable quantity of liquid for a finding of substantial harm. As discussed in the June 17, 1996, RSPA final rule, an incident involving the transportation of 1,000,000 gallons of crude oil could cause substantial harm, even if not in a single packaging. This finding is consistent with Facility Response Plans (FRPs) for ''substantial harm'' sites (see 40 CFR 112.20 and 112.21). FRP facilities require an approved plan for one million gallons or more of oil storage capacity, or transfers of oil over water in vessels that have oil storage capacities of 42,000 gallons or more. While a single tank car is not likely to hold 42,000 gallons of crude oil, the increasing reliance on HHFTs [1] poses a risk that was not considered when RSPA made its determination on that threshold.

The consequences, including environmental impacts, of a derailment of an HHFT have been demonstrated in recent train accidents in Lac Mégantic, Quebec, Canada; Aliceville, AL; and Casselton, ND.[2] On January 23, 2014, in response to its investigation of the Lac-Mégantic accident,[3] the National Transportation Safety Board (NTSB) issued three recommendations to PHMSA. Of note here is Safety Recommendation (SR) R–14–5,[4] which requested that PHMSA revise the spill response planning thresholds prescribed in 49 CFR Part 130 to require comprehensive OSRPs that effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products. In this recommendation, the NTSB raised a concern that, ''Because there is no mandate for railroads to develop comprehensive plans or ensure the availability of necessary response resources, carriers have effectively placed the burden of remediating the environmental consequences of an accident on local communities along their routes.'' In light of these accidents and NTSB SR R–14–5, PHMSA is now re-examining whether it is more appropriate to consider the train in its entirety when setting the threshold for comprehensive OSRPs.

Considering the typical 30,000-gallon capacity rail tank car used for the transport of crude oil, a 1,000,000-gallon threshold for oil on a train would translate to requiring a comprehensive OSRP for trains composed of approximately thirty-five cars of crude oil; all of the aforementioned train accidents involved train consists [5] with more than 70 tank cars of crude oil, and PHMSA expects the business practices for HHFTs would result in train consists that exceed 35 crude oil cars. Using a 42,000 gallon per train consist threshold, PHMSA expects that a train consist with two crude oil carloads would trigger the requirement for comprehensive OSRPs; PHMSA seeks comment below on what impact that would have on current business practices for shipping crude oil by rail.

In order to inform a potential future NPRM that would adjust threshold quantities to trigger comprehensive OSRP requirements for HHFTs, PHMSA seeks comments on the questions below. The most helpful comments reference a specific portion of the ANPRM, explain the reason for any recommended change, include supporting data, and explain the source, methodology, and key assumptions of the supporting data.

1. When considering appropriate thresholds for comprehensive OSRPs, which of the following thresholds would be most appropriate and provide the greatest potential for increased safety? What thresholds would be most cost-effective?

a. 1,000,000 gallons or more of crude oil per train consist;

b. An HHFT of 20 or more carloads of crude oil per train consist;

c. 42,000 gallons of crude oil per train consist; or

d. Another threshold.

2. In exploring the applicability of comprehensive OSRP requirements to trains carrying large volumes of crude oil, are the requirements of comprehensive OSRPs clear enough for railroads and shippers to understand what would be required of them? If not, what greater specificity should be added?

3. In exploring the applicability of comprehensive OSRP requirements to trains carrying large volumes of crude oil, are there elements that should be added, removed, or modified from the comprehensive OSRP requirements? Please consider the regulations covering other modes of transporting crude oil (such as pipelines), and the relevant differences between modes of operation, in your response.

4. What costs might be incurred in developing comprehensive OSRPs and submitting them to FRA for approval? To the extent possible, please provide detailed estimates.

5. What costs might be incurred to procure or contract for resources to be present to remove discharges? In these estimates, what are your assumptions about the placement of equipment along the track, types of equipment, and maximum time to contain a worst-case discharge?

6. What costs might be incurred to conduct training, drills, and equipment testing? To the extent possible, please provide detailed estimates.

7. It is assumed that most railroads and shippers currently have basic OSRPs in place. What, if any, aspects beyond the basic plan requirements do these plans voluntarily address? To what extent do current plans meet the comprehensive OSRP requirements, including procurement or contracting for resources to be present to respond to discharges?

8. To what extent should recent commitments to the Secretary of Transportation's ''Call to Action,'' and other voluntary industry actions, inform the exploration of additional planning requirements for trains carrying large volumes of crude oil? For example, how should voluntary emergency response equipment inventories and hazardous material training efforts be factored into the exploration of additional planning requirements? Should PHMSA require that resources be procured to respond on a per route basis, or at the state/county/city/etc. level? What is the rationale for your response?

[1] In today's NPRM 2137–AE91, the proposed definition for an HHFT in section 171.8 is: 20 or more carloads in a single train of a Class 3 flammable liquid. This definition does not include combustible liquids.

[2] For more extensive discussion of recent accidents involving crude oil transportation by rail, please see the NPRM for 2137–AE91, published today.

[3] *http://www.bst-tsb.gc.ca/eng/enquetes-investigations/rail/2013/R13D0054/R13D0054.asp.*

[4] *http://www.ntsb.gov/doclib/recletters/2014/R-14-004-006.pdf.*

[5] A train consist is considered the rolling stock, exclusive of the locomotive, making up a train.

9. Should PHMSA require that the basic and/or the comprehensive OSRPs be provided to State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Fusion Centers, or other entities designated by each state, and/or made available to the public? Should other federal agencies with responsibilities for emergency response under the National Contingency Plan (e.g. U.S. Coast Guard, EPA) also review and comment on the comprehensive OSRP with PHMSA?

Issued in Washington, DC, on July 23, 2014, under authority delegated in 49 CFR 1.97.

Anthony R. Foxx,

Secretary of Transportation.

[FR Doc. 2014–17762 Filed 7–31–14; 8:45 am]

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Federal Register

Vol. 79, No. 148

Friday, August 1, 2014

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FEDERAL REGISTER PAGES AND DATE, AUGUST

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
August 1	Aug 18	Aug 22	Sep 2	Sep 5	Sep 15	Sep 30	Oct 30
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August 11	Aug 26	Sep 2	Sep 10	Sep 15	Sep 25	Oct 10	Nov 10
August 12	Aug 27	Sep 2	Sep 11	Sep 16	Sep 26	Oct 14	Nov 10
August 13	Aug 28	Sep 3	Sep 12	Sep 17	Sep 29	Oct 14	Nov 12
August 14	Aug 29	Sep 4	Sep 15	Sep 18	Sep 29	Oct 14	Nov 12
August 15	Sep 2	Sep 5	Sep 15	Sep 19	Sep 29	Oct 14	Nov 13
August 18	Sep 2	Sep 8	Sep 17	Sep 22	Oct 2	Oct 17	Nov 17
August 19	Sep 3	Sep 9	Sep 18	Sep 23	Oct 3	Oct 20	Nov 17
August 20	Sep 4	Sep 10	Sep 19	Sep 24	Oct 6	Oct 20	Nov 18
August 21	Sep 5	Sep 11	Sep 22	Sep 25	Oct 6	Oct 20	Nov 19
August 22	Sep 8	Sep 12	Sep 22	Sep 26	Oct 6	Oct 21	Nov 20
August 25	Sep 9	Sep 15	Sep 24	Sep 29	Oct 9	Oct 24	Nov 24
August 26	Sep 10	Sep 16	Sep 25	Sep 30	Oct 10	Oct 27	Nov 24
August 27	Sep 11	Sep 17	Sep 26	Oct 1	Oct 14	Oct 27	Nov 25
August 28	Sep 12	Sep 18	Sep 29	Oct 2	Oct 14	Oct 27	Nov 26
August 29	Sep 15	Sep 19	Sep 29	Oct 3	Oct 14	Oct 28	Nov 28